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II

A HANDBOOK OF CHURCH LAW

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A HANDBOOK  
OF  
CHURCH LAW

BY  
THE REV. T. A. LACEY, M.A.

LONDON  
GRANT RICHARDS  
48 LEICESTER SQUARE

1903



## EDITOR'S PREFACE

WHATEVER differences of opinion there may be upon other matters among Churchmen (and those differences are less than is often imagined, and are lessening still), all are agreed that we suffer greatly from want of priestcraft. While the craft of a doctor, lawyer, or engineer is the subject of long training, assisted by handbooks of the most severely practical nature, the ministers of the Church are launched upon their most difficult and varied work with but the shadow of a preparation, and they spend a large part of their career in learning how to do this work. Many never learn, and few indeed can hope to become masters of a craft that requires so many forms of spiritual, intellectual, social,

and artistic knowledge. The most successful priests learn through many experiments and failures to do certain things well by the time they are middle-aged, and a few deacons are fortunate enough to be trained under them. But for the most part we blunder along as best we can, and, too often, die amateurs.

These handbooks cannot pretend to do for the parson what experience and a spiritual life alone can do. But their object will be to help him to start on the right lines, and to offer him the results which others have found to be the best as the result of their own experiments and failures. They are the work of writers who have specialised in certain directions, and who venture to offer their own experience, enforced by that of other workers in the same fields, for the guidance of those whose duty it is to master the manifold activities of parish work. In the present poverty of tradition no writer can lay claim to any finality ; but at least all who take part

in this series will endeavour to be exceedingly practical.

It is, however, by no means only for the clergy that these handbooks are intended. As we are emerging from the sloth, so we are emerging from the sacerdotalism of the Georgian era. Church work is no longer regarded as the sole concern of the priest. Readers and Deaconesses, Sisters and Evangelists, Clerks and Sacristans, Nurses and District Visitors, Churchwardens and Side-men, Catechists and Teachers, Choirmasters and Choristers, Secretaries and Organisers of all kinds, are each year labouring more energetically and more intelligently in the Lord's vineyard. Upon them how much of the future of England depends! A skilled clergy, co-operating with an ever-growing band of trained workers such as these, may indeed look without misgiving upon the task that lies before us, thrilling and inspiring us by its very magnitude.

In conclusion I would say that we cannot hope to succeed in our little contribution to the work without the help of many others, who can add their experience to our own. We therefore ask for suggestions and corrections, in order that we may make the series as complete as possible, and may improve those volumes which are already published should other editions be called for.

PERCY DEARMER.

S. MARY THE VIRGIN,  
PRIMROSE HILL, N. W.

## PREFACE

*This little book will not be likely to tempt any one to the perilous folly of acting as his own lawyer. It is too obviously inadequate. I hope that its true purpose may be equally recognisable. It is an attempt to state the principles underlying the practice of Church Law, and at the same time to give the kind of information about that practice which ought to be the familiar possession of all concerned in the administration of the Church. To set out the principles without practical illustration is to lose oneself in generalities. To set out the practice without showing its relation to the principles is to invite men into a maze without a clue.*

*I will explain two points of nomenclature in regard to which I have tried to be consistent. The English language has no word answering*

*exclusively to the Latin Jus, the French Droit, the German Recht. We have only the word Law, which does manifold duty. I have tried to avoid using this word Law in the sense of a particular enactment, reserving it for the sense of Jus. The proper title for our subject is Jus Canonicum, Canon Law, but this term is in England so generally associated with a particular and temporary development of the Christian system that, to avoid misunderstanding, I have reluctantly imitated the German Kirchenrecht and spoken generically of Church Law. I can only apologise for the verbal anomaly involved in making Ecclesiastical Law a division of Church Law.*

*My other care has been to maintain a verbal distinction between what is allowed or required by Church Law and what is allowed or required by the Laws of England. For this purpose I have drawn upon the wealth of the English language in synonyms, using the word lawful in the former sense, the words legal and legally*



*exclusively in the latter sense. The distinction is so important, so obscure at times, and so frequently forgotten, that a difference of terms, however arbitrary, may be advantageous.*

*I have tried to keep to my subject, not invading the province of the moralist or of the ritualist. The question for me is not what ought to be done or what may be done with an approving conscience, but what is required or allowed by law. The conscience may demand much more, or may forbid, in certain circumstances, what in itself is lawful. For the treatment of these topics, as also for advice about the details of public worship and the administration of the Sacraments, the reader is referred to other books.*

T. A. L.

MADINGLEY, February 12, 1903.



# CONTENTS

CHAP.	PAGE
I. THE NATURE OF CHURCH LAW. . . . .	1
II. ECCLESIASTICAL CENSURES . . . . .	14
III. THE DEVELOPMENT OF ECCLESIASTICAL LAW . . . . .	28
IV. THE MATERIALS OF ACTUAL CHURCH LAW IN ENGLAND . . . . .	42
V. OF PERSONS IN THE CHURCH . . . . .	50
VI. THE ORGANISATION OF THE CHURCH . . . . .	66
VII. PROMOTION OF BISHOPS AND CURATES . . . . .	97
APPENDIX TO CHAPTERS V—VII . . . . .	129
VIII. OF ECCLESIASTICAL JURISDICTION . . . . .	137
IX. OF PASTORAL CARE . . . . .	169
X. OF PUBLIC WORSHIP . . . . .	185
XI. ADMINISTRATION OF THE SACRAMENTS AND OTHER RITES OF THE CHURCH . . . . .	205
XII. OF ECCLESIASTICAL PROPERTY . . . . .	243
APPENDIX TO CHAPTERS XI—XII . . . . .	283
INDEX . . . . .	287



# A HANDBOOK OF CHURCH LAW

## CHAPTER I

### THE NATURE OF CHURCH LAW

THE Christian Church is a society of men, united under the headship of Jesus Christ, reigning in Heaven. They are gathered into this society for the purpose of developing the perfect human life. This perfection is attainable only by the grace of God, and grace is accordingly poured out on the Church, and thereby on all the members of the Church. But the grace of God does not act mechanically; it is effective only when the will of the individual man responds to it and works with it to the forming of character. For this formation of character the social life of the Church is designed; it proceeds by way of what St. Augustine calls *correptio*, the

correction of manners by rule, by exhortation, and by discipline.

No society can exist without laws regulating the social conduct of the members. Every well-devised law regards the chief end of the society in which it is enacted ; but some laws do this directly, others indirectly and by way of guarding the society itself. In the latter kind are laws of constitution or organisation. The Church accordingly has laws of either kind ; laws which directly regard the formation of the Christian character, and laws which are intended to promote the wellbeing and effectiveness of the Christian society.

Law is either divine or human. It is either imposed by the Creator, or enacted in each several human society by a sufficient legislature. In ordinary civic communities the distinction may be otherwise drawn as between natural and positive law. Natural law will then be that which is imposed on man by the nature of his being ; not indeed that which he most easily and most generally accepts as binding, but that which is found to be necessary

for the best development of his powers: it is recognised as divine when we believe that God intends this development of his creatures. Positive law will be that which is enacted by the legislature of each society in effort after the best development of human life. But if a particular society be established with the help of a divine revelation the distinction will not be quite the same. Divine law will now include some positive enactments made by revelation: human law will consist of other positive enactments, made, with whatever divine guidance, by the legislature of the society. The Jewish polity of the Old Testament had ordinances given by revelation, which were unalterable except by further revelation, and were therefore spoken of, while the dispensation lasted, as no less unchanging and eternal than the precepts of the natural law. When the Lord Jesus Christ established his Church of the New Testament, he gave to this society also certain positive laws, few and simple, which no human authority can abrogate. There is therefore in the Church a

Divine Law, consisting of those rules of nature which are common to all societies and of the positive precepts given by the Founder: there is also a Human Law, consisting of precepts given by those having authority in the Church. This human law of the Church is distinguished from the positive laws of civic communities by the name of Ecclesiastical Law. The distinction between Divine Law and Ecclesiastical Law is admirably illustrated by St. Paul's regulation of marriage in his first epistle to the Corinthians: in one case he says, 'I give charge, yea not I, but the Lord': in a case immediately following he writes, 'To the rest say I, not the Lord.'

The Divine Law was part of the sacred tradition committed to the Christian society from the first. Like the tradition of doctrine it was carefully guarded, and within a century was sufficiently, though undesignedly, enshrined in those occasional writings which we reverence as the books of the New Testament. Unlike the tradition of doctrine it could receive additions in the form of Ecclesiastical Law



additions which begin from the earliest years of the Church, and are varied according to the needs and possibilities of each succeeding age. By whom is this law made? What is the legislature of the Christian Church? The question is agitated; but apart from some obscure details the answer is not difficult. There are certain passages in the Gospels where the Lord seems to be giving the Apostles the legislative power of binding and loosing. It is objected that no definite restriction of the power to the twelve is indicated: the words may apply to the whole body of the Church in which the legislative power would naturally be inherent were there no such restriction. This objection has little weight when we find the Apostles, and those that are associated with them in their ministry, peremptorily exercising the power in question. It is a graver objection that in these passages the Lord seems to be speaking rather of the interpretation of the Divine Law, than of the power to impose Human Law. But granting that in the Gospel there is no express

appointment of the Apostles to legislative power, granting even that no Divine Law to this effect was contained in the Christian tradition, we have still to observe that the power was exercised without question by the Apostles, singly or collectively according to circumstances. They took others into their company, by what process we need not now consider, and their order thus became perpetual. If they were the legislature of the Church in the first instance, and if no constitutional change has been made since, their successors form the legislature now. It does not follow that their legislation is arbitrary. There are obscure indications that in the first age the multitude or the whole Christian people was consulted, and that laws would not lightly be imposed without general consent. Yet, on the other hand, no reader of St. Paul's epistles to the Corinthians can fail to see that in case of need the Apostle was prepared to impose his rule even upon the unwilling Church. A survey of succeeding ages shows the bishops, as successors of the Apostles, ruling the Church

with supreme authority, but not without regard to the wishes of the ruled. There has never been a representative system, by which the people of the Church may definitely speak in the matter of legislation, but means have never been wanting for expressing the popular will, and chief among these we find the power of passively rejecting a law.

Customary law is familiar to all societies. It is in most the background of legislation. But its value, as compared with that of written law formally enacted, is variable. The customary Common Law of England is at once superseded by the provisions of a statute. Yet even here there are statutes which have been a dead letter from the date of their enactment: they are not enforced in the face of a hostile public opinion. But in the legislation of the Church, Custom has a more solid value more definitely recognised. Canons and Constitutions may be made by the legislature, but to obtain the value of Law they must be published to the faithful and also put in practice. In technical language they must

be 'promulged and put in ure.' But the practical use of such an enactment may be impeded by the passive resistance of the faithful, and canonists will then speak of it as inoperative because not received. For example, some of the constitutions of the Council of Trent were not received in France, though the general authority of the Council was allowed without question, and these constitutions did not become law for the Church in France.

The power of Custom is not exhausted in this passive rejection of change. It is a flexible organ of legislation. It is regarded as a continuous expression of the will of the community; and therefore a growing custom which is not formally reprobated by those in authority, as soon as it is well settled and shown to be no mere fluctuating fashion, becomes established as Law. It will even supersede written law. A canon or constitution so superseded is said to have fallen into desuetude. Canonists have laid down rules of varying stringency by which to decide when desuetude is accomplished, but all recognise

the principle. In other systems of law there may be an appearance of desuetude ; among the Laws of England there are statutes which are obsolete owing to the force of public opinion ; but even the most forgotten of these may be revived. In Ecclesiastical Law desuetude effects a real abrogation. Such abrogation may be either general, or local and particular. A canon may remain valid in one region and fall into desuetude elsewhere. When the canonists of the Middle Ages worked out their system of law for the whole Western Church, this last effect of custom became so important that the word *consuetudo* meant for them, in ordinary parlance, nothing else but Local Custom overriding General Law.

Two causes would seem to have contributed to this dominance of custom in Ecclesiastical Law. One springs from the character of the ecclesiastical legislature, the other from the fundamental nature of Church Law.

Some flexibility of legislation is necessary to the wellbeing of any society. Custom is a

delicately flexible organ of legislation, but written law stands rigid unless there is a legislature always ready for action. The Statute Law of England is in continual flux with the continuous activity of Parliament. But the legislature of the Church is not of this kind. It is in the hands of the bishops, severally and collectively. A bishop can legislate severally for his own diocese, but only within very narrow limits; he is restrained both by the general law of the Church and by various external hindrances. — The bishops of a province in Synod have a larger field, but are still under close limitations. A larger Council has vague powers, but is assembled with difficulty for a great need. There are parts of the Church where local legislation is fairly vigorous; but for the most part the written law of the Church is extremely rigid. This having been from very early days the character of the ecclesiastical legislature, the necessary flexibility of Law has been secured only by a generous recognition of Custom. Those churches indeed which bow

to the modern Papacy acknowledge in the Roman Court a readily accessible legislature of almost unlimited powers, and for the canonists of these churches, Custom is losing importance. Elsewhere it remains dominant.

The second cause of its dominance is to be found in the character of Church Law. Ecclesiastical Canons and Constitutions are not enforced by penalties or constraint. Canons are rules of conduct, Constitutions are detailed directions. They are imposed only on the moral sense of the faithful. The correction of manners by ecclesiastical discipline implies always the consent of the disciple. This fundamental principle was established by the Lord when he said: 'If he refuse to hear the Church, let him be unto thee as the gentile and the publican.' He who will not obey the law of the society may be treated as excluded from membership in the society, may be excommunicated; but there are no means of compelling obedience. There are some loose forms of civil society in which the legislature and judiciary are left thus without

material force: they can but declare the law and leave it to its effect on the individual conscience; it is then sometimes enforced by a strong public opinion, or by superstitious terrors, sometimes by individual vengeance, which leads rapidly to anarchy. The rules of the Church have at times been enforced by such adventitious aids, with no small injury to religion: in themselves they have no element of coercion. It is therefore the easier for them to become a dead letter. Recognising this fact, and systematising its results, canonists have formulated those principles of reception and desuetude which make Custom dominant in Ecclesiastical Law.

We are here considering the Law of the Church in its purity. In practice it is constantly found mixed with other law. Members of the Church are also members of other human societies, to the laws of which they are subject, and many provisions of Church Law cannot be observed, cannot even be understood, without reference to other laws. They affect rights of property, or personal privi-



leges, which are entirely subject to the law of civil society. But a clear understanding of the subject must begin from the definition of Church Law in itself.

In sum, Church Law is the system of regulations by which the society of the Christian Church and the religious lives of its members are ordered and disciplined: it is partly divine, partly human or ecclesiastical: the Ecclesiastical Law consists of Canons and Constitutions enacted by the bishops or pastors of the Church, and of Customs, local or general, which under certain conditions override the written law.

## CHAPTER II

### ECCLESIASTICAL CENSURES

WE have said that Church Law contains in itself no element of coercion. Our Lord laid down this principle when he said to Pilate: 'My kingdom is not of this world; if my kingdom were of this world, then would my officers fight, that I should not be delivered to the Jews; but now is my kingdom not from hence.' Obedience is not to be enforced by compulsion. But a law which is not enforceable is imperfect from the social point of view; it is little more than a guide to the individual conscience. The Christian society has means of enforcing, though not of compelling, obedience. In the last resort, as we have seen, the offender can be expelled from the society. While still within the fellowship of the society he may be required to submit himself to cor-

rective discipline, for his own good and for the good of the community. In the Epistles to the Corinthians we find St. Paul imposing such correction upon the man guilty of incest, with obvious regard to these two ends, and the Apostle speaks more generally in other places of a like exercise of authority.

These corrective measures are called Ecclesiastical Censures. The Latin word *censura* stood for the office and function of the Censor, the magistrate by whose judgment every citizen was awarded his proper place in the complicated structure of Roman society, being promoted or degraded as occasion might require. The discipline of the Church, more especially in the West, seems to have been formed on this model. The Christian society was ordered in various ranks; the *clergy* in their several grades; the faithful *laity*, the *λαός* or *plebs*, that is to say the commons of the sacred kingdom; below these the *catechumens*, who were preparing for admission to the privileges of the faithful. This being so, the normal form of ecclesiastical censure was permanent

or temporary degradation of an offender to the rank next below that which he occupied. Thus we hear of a bishop being condemned to rank with presbyters, a clergyman with the laity. A layman put under censure did not fall actually into the class of catechumens, for his baptism was not annulled, but he passed into a corresponding position of *penance*. Within this position again were several grades, as a penitent approximated to restoration or fell farther away from the privileges of the faithful. Common to all penitents was exclusion, more or less complete, from participation in the divine worship of the Church.

Such is the primitive and essential character of ecclesiastical censures. They are imposed by an immediate superior; on the faithful and the clergy by their own bishop or his deputy; on a bishop by a council of other bishops, or if law and custom so allow, by a single bishop of superior dignity. In certain cases an appeal may lie to a higher authority.

*Excommunication*, or entire severance from

the Christian community, is the ultimate censure. The meaning of this term is confused, however, by a secondary use. One bishop, holding another bishop grievously at fault, may refuse to hold any communication with him in sacred things: he has, perhaps, no immediate authority over him, and cannot put him to censure, but he holds aloof to express his disapproval. There are numerous instances of this procedure from the third to the sixth century. When the bishop of one of the greater sees took this course it usually led to the holding of a council, in which the offender was either condemned or cleared of the charges laid against him. Otherwise a complete schism between the parts of the Church holding by the opposed bishops would ensue; the most striking example of which is the separation between the churches of Rome and Constantinople which has continued from the time when Leo IX. and Michael Cerularius denied each other communion, in the year 1054, down to our own days. Such unhappy separation, though the parties concerned are commonly

said to *excommunicate* one another, is not in the nature of ecclesiastical censure, and should be carefully distinguished from true excommunication.

*Ecclesiastical Courts*, or Courts of Spiritual Jurisdiction, were gradually evolved as the discipline of the Church became more formal and was digested into rules of law. They were formed after the model of Civil Tribunals, and have existed in great variety, with an elaborate system of appeals, of which there will be more to say below. It is enough to say here that their one essential function is to impose or relax ecclesiastical censures.

*Indulgences* are a natural, though not an essential, part of such a disciplinary system as we are considering. They are remissions of censure, allowed for good cause by the same authority which imposes the censure. In particular an indulgence is a remission, partial or entire, of the disciplinary degradation to the rank of penitents required by the law of the Church for certain offences. It may thus be an indulgence for a given number of days,

diminishing the period of penance, or a plenary indulgence, remitting the whole. The abuse of indulgences, on the part both of those granting and of those receiving them, during the later Middle Ages, contributed more than anything else to destroy the disciplinary system of the Church. One of the worst abuses, the grant of indulgence for a money payment, continued to be the practice of the English Ecclesiastical Courts, under the name of commutation of penance, down to the middle of the nineteenth century.

*Criminal procedure* against those under censure began as soon as the empire became Christian. Bishops and priests degraded on the charge of heresy were condemned to exile from the time of Constantine. In the year 385, Priscillian and his companions, being in the same case, were put to death by the Emperor Maximus. This became the settled policy of Christendom. It was represented in England by the writs *de haeretico comburendo* and *de excommunicato capiendo*. These were granted

from the King's Courts as of common right, the former for the execution by the sheriff of a person convicted in a spiritual court of heresy, the latter for the imprisonment of a person excommunicated on any other count. This procedure does not belong to Church Law, and need not detain us, except for the remark that it proved in the long-run most injurious to ecclesiastical discipline; for since the censures of the Church carried with them pains and penalties inflicted by the civil arm, and since it is manifestly unjust to punish any man twice for the same offence, the King's Courts restrained the imposition of ecclesiastical censure for offences which they themselves were able and willing to punish. The writ *de haeretico comburendo* was abolished by statute (29 Car. ii. c. 9) in the year 1676; for the writ *de excommunicato capiendo* was substituted in the year 1813 (53 Geo. iii. c. 127) a writ *de contumace capiendo*, which is in one respect more stringent, since the ecclesiastical judge, without proceeding to excommunication, may pronounce a person *contumacious*, signify the



same to the King in Chancery, and at once have a writ issued for the imprisonment of the delinquent. Several priests were imprisoned under this writ in the years 1876-81, but it has not been issued against a layman for many years past.

*Ecclesiastical offences* are such acts as call for censure. They are (i), notorious immorality which scandalises the faithful; (ii) heresy, or the reckless and insistent assertion of doubtful doctrine; and (iii) contumacious disregard of lawful commands. Of late years, persistent neglect of his pastoral duties by a curate has taken a prominent place among such offences. If it be not treated apart by itself, it may be referred either to the first or to the third of the above categories. The spiritual courts are practically hindered from dealing with many offences within the first category by that jealousy of the King's Courts above referred to, which can hardly be removed so long as the writ *de contumace capiendo* remains a possible instrument of punishment.

The censures actually in use, or available for

use, at the present day in England are as follows:—

*Admonition* is not in the stricter sense of the word a censure; but it ranks among censures because it is ordinarily the termination of a formal disciplinary process. Every such process is begun *pro salute animae*, with a view to the soul's health of the person incriminated. Unless in very flagrant cases, it is thought sufficient in the first instance to admonish the offender, and with this admonition the process ends. If the offender fall again into the same fault after admonition, a fresh process will end in more severe censure.

*Deposition* from holy orders, or *degradation*, is the definite removal of an offender from the rank of the clergy to that of the laity. The sentence is pronounced with great solemnity by the bishop, who is attended, according to the sacred canons (Code of 1603, can. 122), by several of his clergy. The deposed clerk does not lose the character and power of Order, which are indelible (p. 63), but he forfeits all right to exercise the ministry,

unless he be reinstated by the same authority which has degraded him. This censure, long disused, has lately been revived in practice.

*Deprivation* is a minor degradation, removing the delinquent not entirely from the exercise of the ministry but from its exercise in a particular place. A bishop is thus removed from his diocese, a curate from his parish, and is said to be deprived *ab officio*. There is usually a benefice annexed to the office, and he is deprived also *a beneficio*, but of this elsewhere. A curate holding a terminable licence may be summarily removed by the bishop, but this is only an administrative order and does not involve censure.

*Suspension* is a temporary deprivation from office or benefice for a fixed time, at the end of which time the suspended clerk resumes his position.

*Irregularity* is not in the strict sense of the word a censure, but it is similar in effect. It is an incapacity for the duties or offices of the priesthood, imposed by the law of the Church

on certain persons. It is thus either an impediment to ordination, or after ordination a restraint upon the exercise of the sacred ministry. Among the causes of irregularity commonly alleged are homicide, even if guiltless, adultery, a second marriage, illegitimate birth, and extreme indebtedness. Disregard of a sentence of deprivation or suspension also induces irregularity; and by a special English canon (Code of 1603, can. 113), any priest revealing facts made known to him in private confession becomes irregular. Since irregularity is a condition set up by positive law, it can be removed by dispensation (p. 146).

*Penance* is a generic term covering all censures, but it applies specifically to a mild form of discipline under which an offender is required to perform in public, usually at the church door, some act of humiliation, after which he is to be absolved and discharged of censure. Penance was imposed by the English ecclesiastical courts down to the middle of the nineteenth century with little solemnity, and in a fashion that brought discipline into

discredit. It has since been disused, but may evidently be revived with more seemly circumstances.

*Minor excommunication* is exclusion from reception of the Holy Communion. It is indicated in the rubric of the Book of Common Prayer, which directs the priest to warn certain persons not to present themselves for Communion: he must then, within fourteen days, present them to the Ordinary, who will proceed against them by canonical process. It does not appear that a priest may actually exclude such persons, or on his own responsibility withhold from them the Sacrament if they present themselves. His authority extends only to 'repelling' or warning them not to approach. No Christian may be deprived of the Sacraments, save by sentence of excommunication pronounced by a duly constituted judge on regular process.

*Interdict* is a more severe censure, barring the offender *ab ingressu ecclesiae*, and so from all part in the public worship of the faithful. In the Middle Ages, by a gross abuse of this

censure, whole countries were laid under interdict for the fault of their princes.

*Major excommunication* is the severest of all censures, cutting off the offender from all intercourse with the faithful, according to the words of St. Paul, 'with such an one, no not to eat' (I Cor. v. 11). A person lying under the greater excommunication is denied even the rite of Christian burial.

The above censures are imposed by adequate authority *in foro externo*, in a public tribunal, for offences open and notorious—proved, that is to say, by confession of the delinquent or by sufficient evidence. This does not mean that they are enforced by external authority; they are laid only on the conscience of the offender, and their social effect is produced only by their action upon the consciences of the faithful at large. But they are publicly imposed, and can be removed only with the same publicity.

Judgment is said, however, more especially to be *in foro conscientiae* when a Christian submits himself by private confession to the

jurisdiction of a priest, who may impose and remove censures, enjoin penance, and give absolution, with complete privacy.

Excommunication is in some cases said to be incurred *ipso facto*. This means that the censure must necessarily be imposed by the spiritual judge when the fact of delinquency is formally brought to his notice. It does not mean that the censure is actually incurred without the public action of a competent judge. There must be a declaratory sentence, openly advertising both the offender and the faithful at large of the censure imposed.

Finally, it should be observed that all censures are imposed *pro salute animae*, with a view to the repentance, and, if possible, the restoration of the delinquent.

## CHAPTER III

### THE DEVELOPMENT OF ECCLESIASTICAL LAW

WE have distinguished Church Law into the two departments of Ecclesiastical Law and Divine Law. The latter is fixed and unalterable, the former is of human institution, subject to growth and change. Like other systems of human law, it grew from small beginnings into a vast and complicated structure; as in other systems, there has been some reaction towards simplicity.

It is clear that from the first there were some canons and customs recognised throughout the whole Church; there were also from very early times local canons in addition, and local customs which sometimes over-rode the general law. A striking example is the custom in the province of Asia of fixing Easter on the fourteenth day of the moon, instead of observ-



ing it, as in other parts of the Church, on the Sunday following. This custom eventually gave way to the general law; so also did the peculiar law, whatever it may have been, by which the Bishop of Alexandria was appointed. The two cases illustrate the principle that a local custom must not be allowed to set aside the practice of the whole Church in a very grave matter. In matters of less importance it has constantly been allowed.

The more important rules of the Church seem to have been digested in writing by various authors from the beginning of the second century. Fragments survive which were incorporated into later collections, sometimes put forward as dating from the Apostles themselves. Such were the *Canons of the Apostles*, the *Apostolic Constitutions*, and kindred works. Earlier than these, a genuine document, as it seems, of the second or third century, are the *Canons of Hippolytus*. With the fourth century came a period of great Councils, in which many canons were adopted, seldom enacting anything new, but rather

recording the actual practice of the Church. The canons of seven such Councils, held at Ancyra, at Neocaesarea, at Nicaea, at Antioch, at Laodicea, at Gangra, and at Constantinople, dating between the years 314 and 381, were gathered into a collection which acquired the name of *Codex Canonum Ecclesiae Universalis*, and which seems to have been expressly approved by the Council of Chalcedon in 451. The canons of Sardica, A.D. 347, of Ephesus, A.D. 431, and of Chalcedon, were afterwards added to this collection, as also were the supposed canons of the Apostles; and from the Greek original a Latin translation was made, known as the *Prisca*, which was current throughout the greater part of the West, until the end of the eighth century.

At Rome, however, about the year 530, Dionysius Exiguus made a new translation, to which he added certain canons of African Councils, and also—a step which ultimately led to the gravest consequences—the *Decretals* of the Roman popes from the time of Siricius (*ob.* 398). These Decretals were letters written

by the popes to bishops and others who consulted them, copies being preserved in the Roman archives. Their inclusion in this collection indicated that they were coming to be regarded as of equal authority with conciliar decrees. This volume, known as the *Corpus Canonum*, was held in the highest honour at Rome, and, after the year 787, chiefly through the influence of Charles the Great, its authority spread throughout the West, displacing the *Prisca*. At about the same period was completed the *Codex Canonum Ecclesiae Orientalis*, by the addition of the canons of the Council in Trullo, A.D. 692, and of the second Nicene Council, A.D. 787. This has always remained the standard authority of the Eastern Church.

In the West, however, things went forward with rapid development. The law hitherto in force is usually known as *Jus Ecclesiasticum antiquum*. In addition to the written law we must suppose a vast mass of custom, varying to some extent locally, but not in grave matters. The differences of practice which caused such keen controversy between Scottish and Roman

missionaries in England turned on unimportant details; and the fact that so much was made of them shows what was the general uniformity of practice. The customs of the Church were affected by pressure of all kinds, and not least we must reckon with the legislation of Christian emperors. This was sometimes directed expressly to ecclesiastical affairs: decrees of Gratian and Valentinian compelled other bishops to a deference towards the Bishop of Rome, which had great effect on the development of Church Law.

If it be asked by what authority these heterogeneous materials were imposed as law upon the Church, it can only be replied that they were in fact received as such. They expressed the general sense of the Church; the expression might be local, particular, accidental; the sense was universal.

At what date the *False Decretals* were written, who and of what country was their author, is uncertain. They were produced as authoritative at the Synod of Quercy in the year 857. A collection of documents, attributed to an

unknown Isidore, contained, in addition to the genuine decretals published by Dionysius, thirty-five spurious letters purporting to be from popes of the second and third centuries, with many imaginary decrees of real or imaginary councils. An uncritical age received these with little demur, and the effect was revolutionary. The forgeries were, indeed, skilfully adjusted to what men were coming to regard as customary, and so they avoided patent innovation ; but they represented as dating from the first century that immediate jurisdiction of the Roman pontiff over all bishops which had been slowly making its way from the time of Valentinian, and that conception of the Pope as universal legislator for the Church which was hardly as yet on its way to general acceptance. . In the former regard the forgery took effect at once ; in the latter regard it bore fruit for succeeding centuries.

The *Jus Canonikum Novum* dates from the False Decretals. Other collections were made from time to time, which were finally superseded by the great work of Gratian, called *Corpus*

*Decretorum*, or simply *Decretum*, which saw the light in or about the year 1150. This was not a mere collection of canons and decretals. Entitled by the author *Concordia Canonum discordantium*, it was a digest of all existing written laws under convenient headings. The False Decretals were freely used; their authority, indeed, was at that time unquestioned. The *Decretum* was an honest attempt to codify and systematise the existing law.

Church Law throughout the West was in fact become an elaborate system, in connection with which two great principles are to be noted.

A. *The Papal Monarchy*.—No other word suffices; for supreme authority, both legislative and judicial, was centralised in the Pope and his court. The origin of this conception is obscure. Some have sought it in the ancient Roman Pontificate, which exercised sovereign authority in religious matters over all Roman citizens. Annexed to the person of the emperor, the pontifical title and power was dropped by the Christian Cæsars, and is supposed to have passed insensibly to the

Bishop of Rome. The title of Pontifex, however, was borne by all bishops, and was derived rather from Jewish than from Roman sources. The authority of the Pope was not confined within the borders of the Roman Empire, as we should expect it to be if it were inherited from the old pontificate, but was accepted in kingdoms like those of England and Spain, which jealously guarded their independence of the Empire. We can only say that the papal sovereignty existed, because it was unquestioned. The papal legislation was nowhere treated as inoperative; the papal tribunals drew all power to themselves by a great system of appeals.

It is important to remember that the papal decrees, like the earlier conciliar legislation of the Church, spoke only to men's consciences. The popes, in their great period, never had force at their disposal. Force was continually being used against their persons, they were often helpless fugitives when using the loftiest language of universal dominion. They ruled because Christians at large acknowledged their

right to rule. This right was for a time undisputed in the West, save by some insignificant heretics. But it was closely watched. The Pope could legislate in spiritual things; he must not meddle with other matters. There were continual disputes about the line to be drawn between the two regions. Papal legislation crossing the line was ignored, or rejected with violence. It was not, however, withdrawn. The English ecclesiastical courts, whenever they were free from external constraint, stood by such papal laws as those of bastardy, which were rejected by the laws of the kingdom. Still, the distinction between the two regions of law was recognised on both sides. It was recognised even by Boniface VIII. in his bull, *Unam sanctam*, the supreme expression of papal sovereignty, though he so interpreted the religious duty of Christian men as to leave a mere shadow of freedom to the temporal authority.

B. *Privilege of Clergy*.—The great prop of the papal monarchy was the exemption of the clergy from all secular tribunals. The source



of this principle is sought with more probability in the ancient Roman Pontificate. The Pontifex Maximus was the one magistrate allowed to exercise jurisdiction over all priests in the Roman republic. The emperors jealously retained the pontificate in their own hands until they became Christian: when they dropped it, the old principle rapidly made itself felt in the Christian Empire. The clergy became subject to their bishops only and in all respects. It followed that spiritual censures—the only weapon held by the bishops—had to be used for the ordinary purposes of penal judicature, and degenerated in this use. The evil drew to a head in the Middle Ages, when the number of the clergy was enormously increased by the inclusion of every tonsured man or boy. These enjoyed practical immunity from serious punishment for crime: they fell into the hands of the magistrate only when their conduct had brought them to the pass of degradation from the ranks of the clergy. Kings and magistrates protested against the privilege of clergy, and often invaded it by

violence; but they were slow in getting rid of it, and it was destined to leave its mark in ridiculous fashion upon English criminal jurisprudence until recent times.

The *Jus Pontificium*, as the Canon Law was now not improperly termed, grew rapidly in the thirteenth and fourteenth centuries. It was now that the complete system of ecclesiastical courts was formed, with a host of practising advocates and proctors. In 1234 Gregory IX. published, by the labour of Raymond de Pennafort, a collection in five books of *Decretals* issued since the time of Gratian. In 1298 Boniface VIII. put forth a sixth book, with rules of procedure, known as *Regula Juris*. In 1313 Clement V. found fresh material for five more books, known as the *Clementines*. John XXII. was industrious enough to compile a whole book of *Decretals* himself, the *Extravagantes*; and in 1483 a succession of less active pontiffs had accumulated matter for the *Extravagantes Communes*. These several works, with the *Decretum* of Gratian, make up the *Corpus Juris Canonici*.

We are here far removed from the primitive and essential discipline of the Church. The pontifical Canon Law is largely occupied with the possessions of the clergy; for the exclusive jurisdiction of spiritual tribunals over the persons of clerks had developed into a jurisdiction over all their belongings. The papal legislation also dealt with all legal questions of marriage and testamentary dispositions. It is the fashion to say that the care of these things was tacitly conceded to the Church by the State; but that is to set up an antithesis which was foreign to mediæval thought. It is truer to say that the authorities of the Church took in hand the regulation of these things, and did the work unchallenged.

All this multifarious business was administered in courts which could enforce their rulings only by ecclesiastical censures; and spiritual censures used for such a purpose lost almost all their significance.

The latter days of the fourteenth century saw a new departure. The most distinguished theologians and canonists of France pro-

pounded a theory that the papal legislation had no force inherent in itself, but was valid only where it was *received* by the consent of the local church. The rapid propagation of this opinion struck a fatal blow at the papal monarchy. It was a short step further to say that pontifical laws, once received, could still be rejected afterwards. The English Church, acting indeed under the strong pressure of Henry VIII., but not altogether unwillingly, adopted this principle. The new departure was accompanied, however, by a strange condition. The Act for the Submission of the Clergy (25 Henry VIII. c. 20) bound the clergy to a promise they had already given, not to enact any new canons or constitutions without royal licence, and at the same time enacted that all existing canons, which were not contrariant to the laws of the realm or the king's prerogative, should be used and executed as before. This had the unlooked-for effect of giving statutory force to ecclesiastical laws which had formerly stood only on spiritual authority and common custom. It was in-

tended at the time to codify the ecclesiastical laws observed in England, and to give the new code the force of Statute Law. This not having been done, the greater part of the mediæval Canon Law, with its cumbersome unspiritual details, remained fastened upon the Church of England, while other Churches were gradually freed from it by the continual action of the always flexible papal legislation. In England, apart from the Submission of the Clergy hindering new legislation by the requirement of the royal licence, it has been found practically impossible to initiate any reforms without running counter to some statutory provision, and as a rule no reform can be effectively carried through except by the aid of an Act of Parliament; the effect of which limitation we shall now have to consider.

## CHAPTER IV

### THE MATERIALS OF ACTUAL CHURCH LAW IN ENGLAND

CHURCH LAW is partly written, partly customary. The written law now current in the English Church consists of the general Canon Law of the Western Church, so far as it is applicable to these provinces, and of provincial or diocesan constitutions locally made. A period of considerable activity in provincial legislation was closed by the publication, shortly before the middle of the fifteenth century, of Lyndwode's *Provinciale*, in which are codified the constitutions promulgated under fourteen archbishops of Canterbury, from Stephen Langton to Chichele, with a vast commentary designed to bring them into relation with the general law of the Western Church. This work was

formally approved by the Convocation of York, in the year 1462, and thenceforward became one of the main standards of ecclesiastical law for England.

With the *Provinciale* is usually associated the work of John of Acton, a much earlier writer, who codified in similar fashion the constitutions enacted in the National or Pan-Anglican synods, presided over by the papal legates Otto and Ottobuoni in 1227 and 1268.

The Submission of the Clergy and the statute founded upon it in the year 1533 did not at once paralyse the legislative action of the Church, for though nothing could be done without licence from the Crown, that licence was for a time freely accorded, and the aid of Parliament which the statutory enforcement of the older canons rendered necessary was usually available. The proposed general revision of Ecclesiastical Law was prepared, and the draft has been preserved with the title *Reformatio Legum*, but it was never enacted. There was great activity of provincial and diocesan legislation,

always under the close supervision of the Crown, during the troubled years that followed. The reaction under Mary was marked by several constitutions enacted under the legate authority of Reginald Pole, which would have had great importance had the reaction continued. In the year 1603 the provincial synod of Canterbury adopted a code of a hundred and forty-one canons and constitutions which summed up the results of ecclesiastical legislation from the time of Lyndwode. This code was afterwards adopted by the province of York. Seventeen disciplinary canons were enacted simultaneously for the two provinces in 1640. Since that date little of the kind has been done.

It has been far otherwise with the growth of Customary Law. We must here make a clear distinction between the Laws of the Church and the Laws of the Kingdom of England. The distinction is obvious when expressed; it is obscure in practice. Since the Christian Society has to live and work in the midst of the wider world of human society



in general, the conventions and practices of that world inevitably affect, by their constant pressure, the conventions and practices of the Church. This was the case even while the empire was hostile, Roman law and organisation profoundly influencing ecclesiastical institutions. Still more was it so when the empire became Christian. When emperors legislated in benevolent, even if mistaken fashion, for the good of the Church, their laws passed insensibly into the body of ecclesiastical custom. Thus the written law of the empire became the unwritten law of the Church. In the later Middle Ages, when Church and State were become indistinguishable, when *Imperium* and *Sacerdotium* were regarded as two functions of one body politic,<sup>1</sup> there was reciprocal action; the laws of the Church becoming also laws of the empire or of the realm, and the laws of the realm becoming

<sup>1</sup> See this expressed more especially in the preamble to the Statute of Appeals (24 Hen. viii. c. 12), where the one body politic of the realm or empire of England is described as divided into Spirituality and Temporality, the former 'now being usually called the English Church.'

also laws of the Church, unless in either case there were express repudiation. The judicial system of the Church, in particular, was moulded by the principles and practice of the imperial Civil Law. In England Statutes and the Common Law of the realm affected in the same way, though not without much resistance, the provincial Canon Law.

This state of things, already perilous, was aggravated by the Act for the Submission of the Clergy. This had three effects. First, it made the existing Canon Law, by statute and not only by custom, part of the laws of the realm, so that none of it could be altered in this regard except by Act of Parliament. Secondly, it created an impression that no ecclesiastical canons or constitutions have any efficacy unless they are incorporated in the Laws of England. Thirdly, it gave rise in course of time to the still more objectionable opinion that an Act of Parliament touching the affairs of the Church becomes at once *proprio vigore* a part of the Ecclesiastical Law. The result has been that during the hundred

years next following many things were done in Parliament which ought rather to have been done in the synods of the Church, while during the last hundred years there has been immense activity of this objectionable kind.

What is the effect of this upon the Ecclesiastical Law? We must fall back on first principles, and say that secular legislation affects Church Law just so far as it is incorporated by custom into the working system. We must therefore inquire, in the case of each several statute, whether it has in fact been so incorporated, or whether, on the other hand, there has been sufficient resistance, active or passive, on the part of the Christian Society to prevent the growth of a custom. A solid work on this subject is much needed. In this little volume we can but say, when occasion arises, whether a particular statute seems to be customarily accepted.

It should be observed that some statutes touching the Church indirectly may stand by themselves as laws only of the realm. The claim once made for the administration of the

property of clerks exclusively by ecclesiastical authority has long since been abandoned. A clearer perception of the distinction of Church and State has made it possible to see that the law of property, like the criminal law, belongs entirely to the sphere of the State. Such statutes, therefore, as the Dilapidations Act (ch. xii.), affecting only the tenure and the liabilities of property, need not enter into a survey of Ecclesiastical Law at all, except so far as they practically affect the customs of the Church in other respects. But the English mode of legislation has so confused the limits of Church and State and their respective laws, that in such cases a clear demarcation can rarely be effected.

The Church Law, therefore, of modern England consists of (*a*) the Canon Law, old and new, except so far as it has been abrogated by later legislation or by contrary custom; and (*b*) the Customary Law of our own day, which has been much affected by the constant pressure of the Laws of the Realm.

Let it be observed that English lawyers,

regarding the Ecclesiastical Law, from their own point of view correctly, as an integral part of the Laws of England, classify it in three grades of diminishing force—Statute Law, Common Law, and Canon Law. They include in their Common Law whatever they have adopted of the Customary Law of the Church, and they say that the Statute Law overrides the Common Law, the Common Law overrides the Canon Law. An ecclesiastic, on the other hand, regarding Church Law as a thing apart, is not concerned directly with Statute Law or Common Law. He distinguishes only the written law of canons and constitutions and the unwritten law of custom. He agrees with the lawyers that canons are in force only so far as they are not abrogated by contrary custom.

## CHAPTER V

### OF PERSONS IN THE CHURCH

THE Church is one body, of which the members are individual persons, distributed according to their several functions.

*Catechumens* are not, in the stricter sense, members of the Church, since they are not yet baptized; but they have certain rights in the Church. They are persons under instruction with a view to baptism. They are allowed to be present during a part of the divine worship of the Church, but are excluded from the higher mysteries. The general diffusion of the practice of infant baptism during many centuries did away with the regular catechumenate, and provision is now made only for scattered individuals. When such desire baptism timely notice must be given to the bishop, who will take order

for their instruction as may be necessary. This is usually done by the curate of the parish where they dwell. They are required to prepare themselves for baptism by prayer and fasting. This seems to indicate that they should receive the sacrament fasting, as ancient usage requires. The increasing neglect of infant baptism seems to call for a more systematic catechumenate.

The *faithful* are all persons baptized, and not lying under the graver ecclesiastical censures. By baptism every one becomes a member of the Church, which is the society of the peculiar people of God, and from the number of the baptized are chosen those who administer the society. These are known as the *clergy*. From the Greek *λαός*, *people*, the rest are known as the *laity*. The faithful are thus distinguished exhaustively as laity and clergy.

The *laity* are not to be taken negatively as all who are not of the clergy, but positively as those who are baptized.

Laymen are further distinguished by *con-*

*firmation.* This rite is the complement of baptism, and confirms to the person receiving it all the privileges of membership in the Church. In particular a confirmed person alone is ordinarily admissible to Holy Communion, though a person ready and desirous to be confirmed, but reasonably hindered, is admitted as a matter of grace, and more especially in the hour of death (Peckham, *Const. Confirmationis insuper*, anno 1281).

As a man cannot by any act of his own become a member of the Church, so neither can he of his own will renounce the rights and duties of membership. He is a layman by virtue of his baptism, which cannot be annulled. Baptism is said in this sense to impress an indelible *character* or mark upon the recipient.

*Discipline.*—A layman of whatever degree is subject to the discipline of the Church.

It is contended by some English lawyers that the laity are not bound by canons and constitutions which, like those of the year 1603, have not been confirmed by Act of



Parliament. If they mean that laymen are not bound to observe such canons as laws of the realm, the contention, though not undisputed, may pass unchallenged by us; but if they mean that laymen are not bound to observe them as laws of the Church, it must be answered that all members of the Church alike are bound in conscience by the spiritual obligation to hear the Church, and to obey all rules made by the ruling authority in the Church. To deny this obligation on the part of the laity is to deny their membership in the Church.

*Regulars* are those among the faithful, whether of the laity or of the clergy, who are banded together in a common life for the stricter observance of the Christian virtues. Men or women may be so gathered in families without coming under any special law, but the great development of monasticism after the sixth century and of the mendicant orders in the thirteenth century called for regulation by the authority of the Church. A vast amount of canonical legislation was concerned

with these regulars. All their establishments in England were swept away by Henry VIII., and again by Elizabeth. The revival of the religious life in recent times has made it necessary to recall the principles of ecclesiastical legislation on the subject, which are in process of adjustment to present conditions.

Regulars are constituted by vows of *poverty*, *chastity*, and *obedience*, to which is sometimes added the vow of *stability*, binding the devotee to abide in a particular society. These vows can be received only by a bishop, or one having the authority of a bishop. They bind either for a season or for life, as enjoined. Every house of regulars is subject to the jurisdiction of the bishop of the diocese, unless it has been lawfully exempted, and he may by visitation correct internal disorders against the rule of the society. Regulars having their own chapel allowed by the bishop are free of all obligation to worship in the parish church. Vows may be annulled by the bishop if they are shown to have been taken under pressure of force or fear, or in ignorance of their true

nature. For very grave cause shown the bishop may dispense with the observance of a vow otherwise binding.

The *clergy*, taken broadly, will include all men formally called to any office of ministration in the Church. St. Paul in his epistles enumerates many such offices, which were probably filled under the Apostles by those who were called, in respect of order, *bishops* or *presbyters*, and *deacons*. The title of *bishop* seems afterwards to have been reserved for those who succeeded to the more exclusive powers of the Apostles. The order of *presbyter* or *priest* has never undergone any serious change of function or dignity. The *deacons* at one time acquired great prominence as the administrators of the goods of the Church, and as the personal ministers of the bishops, whom they constantly represented in the intercourse between several Churches. Bishops were thus more commonly chosen from among them than from any other class. Under the deacons were gradually established various minor orders, which may be regarded as an

extension of the diaconate by the bestowal of some of its duties on inferior clerks. We find in history *subdeacons*, *acolytes* (or *collets*), *exorcists*, *readers*, *ushers* (*ostiarii*), and *psalmists*; but not all these orders existed in all Churches, and some have never been known in the East. At Rome, towards the end of the eleventh century, the subdiaconate came to be reckoned with the diaconate and the presbyterate, which ranked as *major orders*; acolytes, exorcists, readers, and ushers were enrolled in four *minor orders*. This arrangement prevailed throughout the Western Church. But in addition to those actually ordained there were many who received the *tonsure*, which from the end of the seventh century was recognised as a dedication of the person, sometimes a young child, to the service of the Church; and all the tonsured were reckoned among the clergy.

Before the twelfth century it had become customary to require candidates for the higher orders to pass in succession through all the inferior orders, first receiving the tonsure.

All ecclesiastical offices were filled by clerks, tonsured at least, the number of whom was inordinately increased by the admission of men seeking only the legal immunities of the clergy. In the sixteenth century the number of tonsured clerks was still large, but few of them received minor orders except as a formal step towards the priesthood.

The English Ordinal introduced in the year 1550 made no provision for any but the holy orders of bishop, priest, and deacon. Readers, however, were ordained later in the same century, with commission to say divine service in the absence of a priest, and to bury the dead. In the dearth of priests they seem to have been not infrequently given the charge of parishes. They did not long continue, and there is no mention of them in the canons of 1603. Ordinary clerks, however, are frequently mentioned in these canons, as also in the rubrics of the Book of Common Prayer, and these must be taken as answering to the *tonsi* of an earlier age. Readers are now ordained in many English dioceses. The

nature of their ministration is defined by episcopal ordinances, there being no general rule about their functions or the mode of their admission.

None but a bishop can raise any one to holy orders. He may ordain only those who belong to his own diocese, by birth or habitual residence or by ecclesiastical appointment. The bishop may, however, delegate any other bishop to act in his stead within the diocese, or may send candidates to the bishop of another diocese for ordination by *letters dimissory*. He can commission a priest to ordain a reader; and by the 91st canon of the Code of 1603 it seems that the curate in charge of a parish can himself make a simple clerk.

A simple *clerk* is required to be a person of honest conversation and sufficient for his reading, writing, and also for his competent skill in singing if it may be. His functions, when appointed to a parish, are 'to read the First Lesson, the Epistle, and the Psalms, with answers to the suffrages' in Divine Service

(Grindal's *Injunctions*, 1571), to care for the fabric of the Church, the ringing of the bells, to attend upon the priest in the administration of the Sacraments, and generally to perform other such duties under the direction of the curate.

A *deacon* must, unless specially dispensed, be at least twenty-three years of age, of which fact he must produce satisfactory evidence to the bishop of whom he seeks ordination. He must also produce evidence of his orthodoxy, of his good life and conversation, and of his proficiency in theological and other studies.

For these purposes a candidate must ordinarily provide himself with the following documents—

1. A certificate of baptism, and also, if necessary, of the date of his birth.

2. Letters testimonial from the authorities of a college where he has been educated; failing these, or in addition to them if much time has elapsed, letters testimonial from three beneficed clergymen countersigned by their respective bishops, unless they be of the

diocese in which the candidate is to be ordained. These must witness of their personal knowledge to his life and conversation for three years past, or for so much time as has elapsed since the period of his other letters.

3. The *Si quis*; a certificate that notice of his intended ordination has been read during divine service in the parish church at his usual place of sojourn, and that no one has alleged any just impediment.

4. A certificate of sufficient proficiency in ordinary studies, and particularly in the Latin tongue: with which the bishop may dispense if he sufficiently examine the candidate himself.

5. A certificate of theological studies pursued in some university or other recognised school or college: with which the bishop may dispense on the same condition.

The bishop is also bound, under pain of suspension for two years from the exercise of his office in conferring holy orders (can. 35, Code of 1603), to examine all candidates himself, with the aid of clergymen selected from his chapter or diocese.



A candidate for holy orders must have a *title*, that is to say, 'some certain place where he may use his function' (can. 33, Code of 1603), together with the assurance of a sufficient maintenance according to his need. Usual titles are a nomination to an assistant-curacy, a fellowship or chaplaincy in a college, and, according to the practice of some dioceses, a mastership in a school of sufficient standing. Membership in a religious order was once, and may perhaps be now, accepted as a title. Specially exempt from this obligation are masters of arts of five years' standing, residing at their own charges within the university. Formerly any candidate was exempted who could prove that he had a patrimony sufficient for his needs. This exemption shows that one purpose of the rule is to hinder the creation of a proletarian clergy. On this ground the bishop is required to maintain any person whom he may ordain without a title, until such time as he can 'prefer him to some ecclesiastical living' (can. *ut supra*).

Immediately before his ordination a candi-

date is required to take an oath of canonical obedience to his bishop, and to subscribe a declaration, imposed by a canon of the year 1865, that he assents to the Thirty-nine Articles, the Book of Common Prayer and the Ordinal, and that in public prayer and administration of the Sacraments he will use the form in the said book prescribed and none other, except so far as shall be ordered by lawful authority. He also takes the oath of allegiance, a statutory requirement which has nothing to do with Church Law, but which renders extremely difficult the ordination of an alien.

The newly ordained deacon receives a document testifying to his ordination, called *Letters of Orders*. The ordination is also noted in the bishop's register, from which a certificate of the fact can afterwards be obtained. On account of the work done a fee is payable to the registrar for the maintenance of his office.

A *priest* must be at least twenty-four years of age, no dispensation being allowed. He must have been a deacon for some time,

usually not less than a year, at the bishop's discretion.

A candidate for the priesthood must produce :—

1. Letters of orders or certificate of his ordination to the diaconate.

2. Letters testimonial from three beneficed clergymen as before, witnessing to his conduct since ordination.

3. A *Si quis*, as before.

He must retain his former title, or have a new one. He must be ordained either by his own bishop (or his deputy), or else on letters dimissory by another bishop. It is customary for bishops to require candidates to pass a further examination.

The newly ordained priest receives letters of orders as before.

The promotion of a bishop will be more conveniently treated in a separate chapter.

An indelible *character* is impressed on the recipient of holy orders, which character he therefore retains, even if he be by ecclesiastical censure deprived or degraded from the sacred

ministry (p. 22). If he be restored, his ordination is in no wise to be repeated. If the validity of any ordination be for any cause called in doubt, it may be repeated *conditionally*. The usual forms of ordination must be observed, and as there is no room for the open expression of the condition within the form as in the case of baptism (p. 209), the condition must be supplied in the *intention* of the bishop and the ordinand, and should be made as manifest as possible. It may also be noted in the Letters of Orders. The same rule should be observed in the case of a heretic or schismatic reconciled to the Church, if there be a doubt as to the validity of any orders he may have received.

A clergyman is forbidden under pain of excommunication (can. 76, Code of 1603) to relinquish his calling and live as a layman. He is debarred, not by Ecclesiastical Law, but by Statute or Common Law, from several secular callings and public functions. The Clergy Disabilities Act of 1870 allows him to escape these disabilities, but only on condition

of renouncing all the privileges of the clericate. By doing this he appears to become *irregular* (p. 23).

Since the twelfth century the clergy have been required by the sacred canons to wear at all times a distinctive dress, which is prescribed with some detail in the 74th canon of the Code of 1603. This was worn with great consistency by the English clergy until the early years of the nineteenth century, when it began gradually to go out of use. It is now worn on ceremonial occasions, and by some of the clergy more commonly. Custom would seem to have relaxed the canonical obligation unless it be enforced anew by episcopal or synodical authority.

## CHAPTER VI

### THE ORGANISATION OF THE CHURCH

FROM the first beginnings of Christianity the members of the Church were grouped together locally. The faithful of a certain town and its neighbourhood were known as the Church of that place, and formed an ordered community administered by presbyters or bishops and deacons. This state of things we find in the books of the New Testament, where we also see that the Apostles who ruled the whole Church ruled also these particular local churches by letters and by visitations. When the second century is slightly advanced we find from the scanty records of the time that every such local church has a single chief, to whom the title of *bishop* is now reserved, but who exercises that supreme authority which had been in the hands of the Apostles. When

the third century has run half its course we find councils or gatherings of these bishops being constantly held for the settlement of important questions, and St. Cyprian lays down the principle, apparently unchallenged, that the episcopate is one undivided body ruling the whole Church, which is thus held in unity.

Here we have the fundamental principles of ecclesiastical organisation. For administrative purposes we must begin with the local Church presided over by a bishop. In some parts of the world and at some ages local churches have been numerous and small, every town having its own bishop. In England, as in some other countries, this custom is unknown. A bishop governs the Church throughout a considerable district, called his *diocese*, the particular town in which his chair is placed, and from which he takes his title, being determined by accidental considerations.

Several dioceses are grouped together in a *province*, the chief bishop or archbishop bearing the title of *metropolitan*. The names are

derived from the political divisions of the Roman Empire, which in this as in other respects contributed much to the development of Church order. Provinces also have been grouped together under a common chief; but no such wider grouping is universal. A diocese was originally administered by the bishop and clergy as a whole, however many churches or oratories it might contain. From the fourth century the custom prevailed of appointing certain priests to the charge of the several churches and of the faithful living in their neighbourhood. A church so served was called *titulus*; the priest in charge had various designations, one being *parochus*, a title borrowed from a petty local office of the Empire; the district was called *paroecia*, which by an obvious confusion was corrupted into *parochia*, whence our word *parish*.

The organisation of the Church proceeds on the lines of these three institutions, the Province, the Diocese, and the Parish.

A *Province* is ruled by the Provincial Synod, consisting normally of the bishops of all



dioceses within the province, who are attended by such notables, cleric and lay, as they may bring in their company. The metropolitan presides, and he has acquired extensive personal powers, so that nothing can be effectively done without his consent.

In England the beneficed clergy and other ecclesiastical corporations have acquired the right to appear personally or by their proctors in the provincial synod. This right seems to have arisen out of the essentially different assembly of the clergy as an estate of the realm, an integral part of the parliament. In accordance with the canonical legislation of the thirteenth century the clergy successfully denied the right of any lay authority to tax their possessions: their attendance in parliament became purely formal, and their representatives met in the provincial synods to grant taxation of their goods concurrent with the taxation of lay possessions voted by parliament. This continued until the year 1661, when the clergy renounced their privilege. The confusion of the two assemblies

has had such effect that whenever a new parliament is elected the proctors of the clergy are likewise re-elected, and lawyers maintain that the synods cannot meet when parliament is dissolved. This was done, in spite of the protests of lawyers, in 1640, but there was a consequent doubt about the legal effect of the synodical proceedings, and the precedent has never been followed. It is obvious that this doubt extends only to the legal, and not to the spiritual, authority of the synod.

The English provincial synods are usually called Convocations of the Clergy. The priests attending them are present as counsellors of the bishops, with whom alone rests the legislative authority. It is, however, an established custom that nothing shall be enacted without their consent. They may present *gravamina*, or allegations of grievance, and frame a proposal, called *articulus cleri*, for the consideration of the bishops. In the province of Canterbury the bishops usually withdraw to hold their discussions apart, unless they prefer to sit in full synod, which is done on rare occasions.

In the Convocation of York, on the other hand, the inferior clergy ask permission to sit apart for discussion, which is usually granted. All definite acts and promulgations must be performed in full synod.

No laymen are summoned to the provincial synods in England, but of late years a new assembly of notables, called the House of Laymen, has been created in each province, to sit concurrently with the synod for deliberation and advice. The rights and privileges of this assembly are not yet determined by constitution or custom.

The synods are considered by lawyers to be bound by the Act for the Submission of the Clergy (p. 40); and this contention has never been practically opposed. Convocations are therefore never held except in pursuance of a writ from the Crown, and nothing is enacted or promulgated without previous *letters of business* and royal licence.

*Provincial Courts* and certain powers of the metropolitan will be more conveniently treated under the head of Jurisdiction; but the *Vicar-*

*general* must here be mentioned, an officer who represents the metropolitan for purely formal business of an administrative kind, and for some that is more than purely formal.

A *diocese* is the district within which a single bishop rules the Church. At one time there were in England, as elsewhere, extensive *peculiar*s or exempt places where the authority of the bishop, or the greater part of it, was exercised independently by other persons. These have almost all disappeared, the most important survival being Westminster Abbey, and the English dioceses have a continuous and homogeneous territory.

Under the bishop the *clergy* of the diocese would seem originally to have formed a united body, maintained from the general funds of the Church; but it is probable that from very early days some priests and minor clerks were appointed to serve in particular places and to live of the offerings there accruing. Later, as it would seem, deacons were in like manner distributed in the diocese. The settlement of priests in parishes left a

certain number, with the deacons, still attached to the principal church or churches—for there may be more than one—where the bishop's chair is set, hence known as *ecclesia cathedralis*. In course of time these were organised as a college, and after the tenth century they were generally ordered in some measure after a monastic fashion, and were known as *canonici* or regular clergy. In England many cathedral churches were actually served by monks. In the rest the regular organisation of the clergy broke down, but the title of *canonicus* or canon survived. It was not peculiar to the cathedral clergy, for there were many establishments of priests, more or less regular, to whom it was applied. The canons or monks of the cathedral claimed to be in a peculiar sense, as against all others, the clergy of the diocesan church, and acquired in consequence certain important privileges.

At the present day the clergy of a diocese may be classified in three categories, with an important subdivision:—(i) The cathedral clergy; (ii) the parochial clergy, including

(a) beneficed and (b) unbeneficed curates ;  
(iii) licensed clergymen.

The cathedral clergy are of varying status, the distinction being due partly to function, partly to benefice (ch. xii.). We are here concerned only with function. There is in the first place a body of priests, usually known, from the style of their benefice, as *prebendaries*. In cathedrals of the Old Foundation, as they are called, there are certain *canons residentiary*, who may or may not be prebendaries. In cathedrals of the New Foundation, which were reconstituted in the sixteenth century after the dissolution of the convents of monks formerly serving them, the prebendaries, fewer in number, are identical with the canons residentiary. In all cases where the cathedral church is fully organised they are presided over by a *dean*. The dean and canons or prebendaries form the *chapter*, a corporate body having extensive powers of self-government in accordance with its own statutes. In cathedrals of the Old Foundation the dean and prebendaries meet as the *greater chapter*,

the dean and residentiaries as the *lesser chapter*, with their several powers and functions under their statutes.

In addition to the above, cathedrals of the New Foundation have a certain number of *honorary canons*, who have a place in the functions of divine worship, but not in chapter. There are also engaged in the service of the Church *minor canons* or *vicars*, who are in holy orders, and *minor clerks*, whose place is now usually occupied by laymen.

Some cathedrals, especially those of modern creation, are also parish churches, in which case the cure of souls may rest either with a member of the chapter or with some other priest specially appointed.

The *parochial clergy* are all priests and deacons having cure of souls, as described below. They have their effective appointment from the bishop alone. *Licensed clergymen* are those to whom the bishop gives a licence to minister in their office either in some particular place, not being a parish church, or throughout the diocese at large.

The *diocesan synod* is the assembly of all the clergy of the diocese, together with such notables of the laity as the bishop may summon. In the synod so constituted the bishop promulgates the decrees of the provincial synod, and makes his own diocesan constitutions. Certain details of administrative business are also properly carried through in synod. The bishop alone decides all questions and makes all decrees, but the general law of the Church requires him first to consult the clergy, and possibly the English custom forbidding the bishops in provincial synod to determine anything without the consent of the clergy may rule the diocesan synod as well. In that case the right of the clergy to present a *gravamen* and to propose an *articulus cleri* may also extend to the diocesan synod. It is impossible to speak positively on this head, for lack of precedents. The general law of the Church requires a bishop to convene his diocesan synod twice a year, but this rule is not observed in England, and synods are rarely held. The legal restraints upon synodical



action imposed by the Act for the Submission of the Clergy have not been called into play to hinder the convocation of a diocesan synod.

Informal gatherings of representative clergymen and laymen, known as *diocesan conferences*, are now held in all dioceses, and they appear to be gathering to themselves certain rights which are not yet subject to canonical definition.

A bishop administers ecclesiastical discipline in a court known as his *Consistory*, of which more will be said in a subsequent chapter. In his absence the court is held by the *Official principal*. He has a *Vicar-general*, who takes his place in the transaction of formal administrative business, and who also sits in the Consistory to hear and determine certain causes. These two offices are commonly held by the same person, with the title of *Chancellor*, who is for the most part not in holy orders. The chancellor is aided by a number of *Surrogates*, who see to the minor business of the court.

The *archdeacon* was originally, as the title implies, the senior of the deacons who were closely attached to the bishop's person. In the eleventh and twelfth centuries much of the judicial business of the diocese devolved on this officer, who acquired an independent position and held his own court, from which an appeal lay to the bishop. This feudalising of functions was accompanied in feudal fashion by territorial division, several archdeaconries being created according to the extent of the diocese. At the present day the archdeacon is concerned chiefly with the admission of churchwardens and with administrative functions relating to benefices, imposed upon him by recent legislation.

*Rural-deans* are officers appointed by the bishop to supervise small areas within the diocese. Their functions are to inspect and report to the bishop any neglect of the fabrics of the Church, and to gather the clergy of their deaneries in chapter for the discussion of matters submitted by the bishop. It is customary also to assemble conferences in

which representative laymen take part. Rural-deans are appointed by the bishop, who allows the clergy, however, in some cases to elect.

A *parish* is a part of a diocese committed to the pastoral care of a priest. It seems clear that the church and the *parochus* are prior to the *district*. The parish is *paroecia*, the neighbourhood of the church, or by corruption *parochia*, the district in charge of the *parochus*. This should be noted, because in some modern practice the district is first set apart, a priest afterwards put in charge of it, and a church last of all provided. The more normal and more ancient procedure, however, is still followed in other cases, by which, a church or oratory being founded and a priest appointed to serve it, the cure of souls in the neighbourhood is afterwards given to this priest. To speak strictly, then, any priest appointed to serve a particular church or oratory might be called *parochus*; but in practice this title is reserved for those who have actually received the charge of souls

within a certain district. In England, however, the more definite title of *curatus*, a man charged with the cure of souls, has prevailed in use, and the title *parochus*, common to the general law of the church, is almost unknown, except by its derivatives *parochia* and *parochiani*.

Another title proper to the curate is *rector*, the ruler of the church within his district. The use of this title, however, has become complicated by the law of benefices, and though it survives in the majority of English parishes it is rather a specific than a general title. Another title entirely proper to the law of benefices is that of *vicar*, the substitute for a non-resident rector, which is now, by an absurd convention, applied to the curate in full right of a new parish, where no rector, technically so called, has been constituted.

The title of *curate* alone will here be used, with one distinction. Since the original curate of a parish may have many assistants, to all of whom the title indiscriminately belongs, he will in case of need be distinguished,

according to a recognised convention, as the *curate-incumbent*, or simply *incumbent*, the rest as *assistant-curates*.

*Parish clerks*.—The curate is assisted by one or more clerks, who may or may not be in holy orders. Their duties are to attend the minister in divine worship, saying and singing as appointed, 'to read the First Lesson, the Epistle, and the Psalms' (Grindal's *Injunctions*, 1571), to assist at marriages and burials, and failing any other officer, to ring the bell for service.

A parish clerk is appointed by the incumbent, who must signify the appointment to the parishioners the next Sunday following in the time of divine service. He must be at least twenty years of age, of good character, able to read and write, and of 'competent skill in singing, if it may be' (can. 91, Code of 1603). He is entitled to customary fees and payment out of the church funds. He may be suspended or removed from office by the archdeacon upon complaint made and investigated, showing him to be an unfit and

improper person to hold it. Doubts regarding the legal power of the ecclesiastical authorities to remove a parish clerk were set at rest by the statute 7 and 8 Vict. c. 59. In some new parishes a clerk is removable by the incumbent, with the consent of the bishop, for any misconduct.

*Parochiani*, parishioners, are the Christians living in the neighbourhood of a certain church, and committed to the charge of the priest serving that church. When it became the rule for all men to pay tithe to their own curate, the lands occupied by the parishioners became tithable to him, and therefore a purely territorial parish was created. In some towns containing several parish churches the *field* or outlying agricultural land was tithable to the curates of the individual occupiers, and was consequently divided in minute portions among the several parishes. In other similar cases the field was more conveniently assigned to the several parishes irrespective of occupation: a parishioner might then be paying his personal tithe to one curate

by virtue of residence, his land-tithe to another. In other cases, again, all the field was tithable to one church, presumably the mother-church of the town.

This law of tithing determined the territorial delimitation of parishes, which has survived its cause. This also accounts for most instances of detached portions of parishes sometimes lying at a considerable distance from the church.

The parishioners, thus defined, became an organised community, to which in England, with the decay of the manorial system, fell most of the functions of local government in secular matters. Thus name and thing, purely ecclesiastical in origin, have acquired secular associations which must be carefully kept apart. The Local Government Act of 1894, creating a new and independent community for secular purposes, has dissevered the functions, but has unfortunately retained for secular use the ecclesiastical title.

The householders, or heads of families, in a parish meet for the transaction of parochial

business under the presidency of the curate. From the place in which it is ordinarily held this assembly is called a *Vestry Meeting*. It may be convened, however, in any place to which the public has free access.

Every parish, new or old, has its own vestry meeting; but in ancient parishes the law concerning it is complicated by the mass of secular business with which it was once charged. Its proceedings were, in consequence of this, regulated by statute, and especially by the Act 58 Geo. III. c. 69. In large parishes a Select Vestry, more or less representative in character, came into existence and was sometimes constituted by a local Act of Parliament. The whole purpose of this legislation has been swept away by the Local Government Act of 1894, which transfers all secular business to the newly created Parish Meetings and Councils, and by the London Government Act of 1899, which has substituted municipalities for the select vestries of former days; but the legislation survives its usefulness and remains to hamper the



work of purely ecclesiastical assemblies. As difficulties may arise if the formalities required by Statute Law are not observed, they are here summarily noted.

A vestry meeting must be convened by a public written notice posted near the doors of the church and all chapels of ease in the parish before divine service on a Sunday three clear days before the day of meeting. It therefore cannot be held earlier than on the Thursday following. The notice must be signed by the incumbent, a churchwarden or an overseer, or any two or more of them. It follows that any one of these may convene a meeting. The notice must state the day, hour, and place of meeting, and also the business to be proposed. Nothing can legally be done of which such notice has not been given. The incumbent is *ex officio* chairman of the meeting, by whomsoever called. In his absence, or in the vacation of the cure, the parishioners present must elect a chairman, who need not himself be a parishioner. All *ratepayers* and they alone, whether paying in person or by

composition, may take part in the proceedings, and no person may vote who has neglected to pay any rate made three months before the day of meeting. In respect of a church-rate the disqualification is so far modified by the Act of 1868, making such a rate irrecoverable by law, that any one refusing payment is debarred only from inquiring and voting about the expenditure of the monies produced by that particular rate. A corporation or company paying rates may appoint a representative to attend the meeting. Every person assessed to the poor-rate on a rental of £50 or upwards has one vote for each £25 of rental up to six votes, but no more. In case of equality of votes the chairman has a casting vote in addition to whatever votes he may have as a ratepayer. Votes are taken by show of hands, but any ratepayer may demand a poll. The chairman alone can appoint the time and place of polling, and he is responsible for receiving or rejecting the votes tendered. His discretion in all these matters is subject only to the control of the High

Court of Justice, which in case of error will order him by *mandamus* to renew the proceedings. The polling must be conducted according to the usual method of parochial elections. Previously to 1894 this was held to exclude the use of the secret ballot; the question has not been raised afresh since the Local Government Act of that date made the ballot the usual method in parochial elections. It is in the power of the chairman to adjourn a meeting, but except in case of disorder this power must not be exercised against the consent of the meeting. He may also adjourn a poll if necessary.

A further consequence of the secularisation of the vestry is that inhabitants of the whole area of an ancient parish claim the right of attending the vestry meetings of the mother-church, though the district has been divided for ecclesiastical purposes into several parishes.

The vestry meetings of new parishes, having no secular functions, appear to be free from the above statutory complications, and are

regulated by Ecclesiastical Law. In some cases, however, there are special bodies, such as a meeting of pewholders, created by an Act of Parliament giving powers for the erection of the church, to which some functions of the vestry are legally transferred. The rights of these bodies must be respected, but it may be found convenient to hold an ordinary vestry meeting for the purpose of confirming their proceedings.

Apart from Statute Law a vestry meeting is regulated by custom. Householders or heads of families alone, as has been said, take part in it. Minor excommunication appears to be no disqualification, but any graver ecclesiastical censure should exclude the offender from this as from all assemblies of the church, and an unbaptized person, being no parishioner, should have no place here.

The meeting is convened by the incumbent or the churchwardens; and as the churchwardens appear to have no power, unless it be expressly given them by law, of acting separately, it would seem that they must jointly

sign the notice. By Ecclesiastical Law each person has one vote and no more, and the neglect to pay a rate is no disqualification. In other respects the Ecclesiastical coincides with the Statute Law.

Churchwardens, sidemen, questmen, or selectmen are persons appointed to attend episcopal synods and visitations for the purpose of reporting to the bishop on the moral and religious condition of the parish. Originally, perhaps, chosen by the bishop, they came to be elected by the parish, and this custom was confirmed by the 89th canon of the Code of 1603. The 90th canon, however, still provides that if the parishioners cannot agree the Ordinary is to appoint. They are to be chosen every year and to come before the proper diocesan court, usually that of the archdeacon, to be admitted to office, during the first week after Easter. If, however, for any cause no election take place, the churchwardens of the previous year are reputed to continue in their functions. They can be elected, in case of need, at any other time, and the Ordinary is

bound to admit them when required to do so. Fees amounting to eighteen shillings are payable on admission.

*Election.*—Churchwardens are elected by a vestry meeting. The chairman has the power of rejecting the nomination of any unqualified person, and if he fails to do so he may be required by *mandamus* to renew the proceedings. Persons qualified are such as are actually resident in the parish and are otherwise capable of taking part in the vestry meeting. The election is to be by the joint consent of the incumbent and the parishioners, if they agree; if they cannot agree, the incumbent may elect one and the parishioners another, and apparently no more. By agreement it would seem that any number may be elected. Thus the normal procedure should be the nomination of candidates either by the incumbent or any parishioner; all being declared elected if no objection be raised. If objection be made a vote must be taken for each candidate, who will be elected if the incumbent and a majority of the meeting agree. Failing the

election of two by such agreement, there must be a divided choice as above described. It is a common practice, but probably one which should not stand, to proceed at once to a divided choice, without attempting agreement. There is no ground in law for the distinction sometimes made between 'parson's warden' and 'people's warden.' In case of equality of votes the chairman has a casting vote, as with the other business of the meeting. The incumbent, after making his own separate election, may not vote as a member of the vestry in the other election, but he appears to be still entitled to the casting vote.

The above rules of Ecclesiastical Law are varied by custom in certain places, as in the city of London, where the incumbent has no separate right of election, and in some large parishes, where several churchwardens are elected by the parishioners of various townships, the incumbent electing only one.

Towards the end of the fifteenth century the sidemen came to be regarded as the legal possessors of the movable goods belonging to

the parish church, and hence arose the title of churchwarden. This function is of considerable importance, and as it cannot be performed in any respect without joint and unanimous action, it is found inconvenient to place it in numerous hands. For this reason it seems to have become customary, since the sixteenth century, to elect only two churchwardens, *eo nomine*, others being added with the more ancient title of sidemen. The two churchwardens are then the legal guardians of Church goods; the sidemen are associated with them in all other functions.

Various secular duties imposed on churchwardens in connection with the poor-law and its consequences no longer exist.

*The Fabrick.*—The parishioners are required by the sacred canons to keep the nave of the church in proper repair, to maintain the necessary fencing of the churchyard, and to provide all things requisite for divine worship. The latter requirements were specified in the constitution *Ut parochiani* of Winchelsey, A.D. 1305, which is the basis of the existing law.



This whole department of administration is known to general Ecclesiastical Law as the *Fabrick*, a name not commonly used in England, for which there is no convenient substitute.

By the 85th canon of 1603 the 'churchwardens or (*et*) questmen'—that is to say, the whole number, and not the two legal guardians only—are charged with the care of the fabrick. To fulfil this duty they must have access to the church at all reasonable times, and the incumbent, in whom alone is vested the freehold, and who alone is entitled to the custody of the keys, is bound to afford them facilities. If he refuse, recourse must be had to the bishop or archdeacon. The churchwardens can buy goods or accept gifts for the fabrick, can sell needless articles, with the consent of the parishioners and of the Ordinary, and can bring an action for trespass on account of damage. They must in all cases act jointly. The *use* of all things connected with the fabrick is subject to the discretion of the incumbent. Thus, for example, the bells

may not be rung nor the organ played without his consent.

The *sexton* is an officer of the fabrick. As servant of the churchwardens he has the care of the church goods. In his administration he is subject to the commands of the incumbent. His appointment varies according to local custom ; it is most commonly in the hands of the incumbent, it sometimes rests with the churchwardens, sometimes with the parishioners in vestry. His wages are payable by the churchwardens out of the funds of the fabrick. He can probably be removed for just cause by the person or persons appointing him, but if he is unreasonably dismissed the High Court will order his restoration by *mandamus*.

The *beadle* is an officer of the fabrick, appointed and dismissible by the parishioners in vestry, whose duty it is to maintain order in the church and churchyard, for which purpose he is endowed with some of the legal powers of a constable.

The *organist* is appointed and dismissed,

according to local usage, either by the incumbent or by the churchwardens. In neither case can he use the organ without the incumbent's permission.

*Finance.*—Churchwardens are not personally liable for any expenditure except such as they individually incur. By ancient custom they can levy on the parishioners a Church-scot or Church-rate for their necessary expenses. This having been levied oppressively as a legal charge upon persons not members of the Church or dissenting from the Church, the power to recover it by law was abolished in 1868. The practice had previously fallen into disrepute, and has seldom been revived in the less objectionable form which alone is now lawful. A rate can be made with the consent of a vestry meeting; any who refuse to pay it are debarred from inquiring or voting in vestry about the expenditure of the money raised. Apart from a rate the churchwardens are dependent, except in some parishes where there is an endowment for the fabrick, upon the freewill offerings of the faithful. They

may, with the consent of the incumbent or of the ordinary, appropriate part of the alms contributed at the offertory; but as these seem to be directed primarily to the relief of the poor and the maintenance of the clergy, such appropriation ought to be limited. Collections of money made at other times in the church, either by alms-boxes, or otherwise, appear to be at the disposal of the incumbent.

## CHAPTER VII

### PROMOTION OF BISHOPS AND CURATES

THE fundamental organisation of the Church is that of the diocese; a subsidiary but practically a most important organisation is that of the parish. The diocese is that part of the Church which is subject to the care of a bishop; the parish is that part of the Church which is subject to the care of a priest, as curate. The diocese is therefore constituted by the appointment, actual or potential, of a bishop, the parish by the appointment of a curate.

In the promotion of a diocesan bishop two things are requisite, *election* and *mission*.

*Election* is the designation of the person. There is no general law of the Church prescribing by whom a bishop shall be elected, and the procedure has varied greatly. The

first precedent is the election of St. Matthias into the company of the Apostles, which is barely distinguishable from an episcopal election. Here are two elements: the choice of two fit persons by the votes of the eleven, and the determination between these two by lot. The former element survived for some ages in episcopal elections: a bishop was chosen, partly at least, by the votes of the neighbouring bishops, and in some cases a council, deposing a bishop, at once elected his successor. In the third century St. Cyprian, describing no doubt the general practice of the West, speaks of a bishop as chosen by the combined voices of the neighbouring bishops and of the clergy and faithful of the diocese. This grew into a system by which the clergy elected, obtained the assent of certain notables among the laity, and presented the elect to the bishops of the province for consecration. Many elections, however, took place tumultuously with no clearly defined order, and it seems to have been generally understood that any man actually obtaining possession of a

see, and receiving consecration from neighbouring bishops, should be accounted its rightful holder, unless he were removed by disciplinary process. This freedom solved many difficulties, but also led to many disputed elections and contests between rival claimants of a see.

The Christian emperors successfully claimed and exercised the power of approving or annulling episcopal elections, and especially in the case of the Roman Church. This right was fitfully asserted by the Western emperors after the time of Charles the Great, until in the eleventh century several popes were elected by the sole voice of the emperor. Feudal sovereigns secured the same power within their dominions, the process being aided by the legal conversion of episcopal possessions into fiefs, which were conveyed to the elect by investiture with crozier and ring, his consecration following at the convenience of the ecclesiastical authorities. In England the earliest elections recorded seem to have been made by the Witan, there being no attempt

made to distinguish, in modern parlance, between Church and State; Knut introduced the practice of investiture by crozier and ring.

The popes were strenuously opposed to this practice, which seemed to imply that the pastoral jurisdiction, symbolised by the crozier, was conferred by imperial or royal grant. It was definitely condemned at the Council of Clermont held under Urban II. in the year 1095. Anselm of Canterbury, Urban's unfailing supporter, induced Henry I. of England, after a sharp struggle, to abandon it, subject to a compact that every bishop-elect should do homage to the king. The king retained the power of election, but a new claim, stirred by St. Dunstan a century earlier, was now being pressed. The cathedral chapters were asserting that with them rested, by the general law of the Church, the sole right of election. A compromise was effected, the king allowing the chapters or their delegates to make a show of electing his nominee, but only on condition that they attended in his presence for the purpose.



This continued until John, at the height of his struggle with the baronage, granted a charter, afterwards approved by the Popes Innocent III. and Gregory IX., by which the elections were to be left wholly to the chapters, subject however to royal licence and approval.

This brief sketch is necessary for any understanding of the present law and practice of the English Church. The settlement made by the charter of John still holds good, but two complications have been brought in which look back to the older usage. These are *letters missive* and election by *letters patent*. Letters missive accompanying the *congé d'élire*, or royal licence to elect, name a person suitable for election. They were issued, perhaps, from the first: during the troubled times of Henry III. the royal nomination was often disregarded; Edward I. was stronger, but a new source of confusion was introduced. By drawing to themselves appeals on disputed elections, by the practice of reservation and provision, and by ingenious use of dispensations from the ancient rule against the trans-

lation of a bishop from one church to another, the popes secured for themselves the effective appointment to all sees. The kings for a time fell in with this policy, trusting to get their own way by diplomacy. The Statute of Provisors in 1351 checked these proceedings, but its force was soon evaded. Capitular elections were held, but the king named in his letters missive the person whom he had selected by agreement with the Roman court. The pope, for his part, kept his claims alive by providing the same person, and this was in practice regarded as the definite appointment. The Great Schism of the Papacy enfeebled the Roman court. In 1416 no pope was recognised in England, and three bishoprics were filled by capitular election alone, the procedure being carefully settled by agreement between Henry v. and Chichele, the Archbishop of Canterbury, and confirmed by parliament. The recovery of the Papacy under Martin v. speedily brought back the former diplomatic methods, until they were broken off by Henry the Eighth's definite rupture

with the papal court. The precedent set by Henry v. was now closely followed, and practice at last coincided with the written law contained in the charter of John.

Henry, however, made a new claim, or rather revived an old one. He claimed the right of actual election for himself. This was to be exercised in case a chapter refused to elect his nominee: he was then to signify by *letters patent* to the archbishop the election of the person nominated. In the first year of Edward VI. this claim was further advanced: capitular elections were forbidden by statute, and all bishoprics were to be filled by letters patent. Capitular elections were restored by Mary and respected by Elizabeth, in whose first year the statute of Henry VIII. on the subject was renewed. In recent times election by letters patent has been revived in the case of new bishoprics founded in churches having no recognised chapter.

Our retrospect shows that the Church has unquestionably accepted this procedure, which therefore stands as lawful ecclesiastical custom.

The dean and chapter of a vacant church pray for a *congé d'élire*, which they receive together with letters missive. They then assemble and proceed to election by one of three canonical modes: *per inspirationem*, a simultaneous designation of the same person by all present; *per scrutinium*, or voting, by ballot or otherwise; *per modum compromissi*, which is the delegation of one or more of the chapter to name the elect. The election is signified to the king, with a petition for the royal assent. Should the chapter elect any other than the person named in the letters missive, the royal assent would be refused, and the king would then proceed himself to elect, signifying the result by letters patent to the archbishop. In the case of churches having no recognised chapter this latter mode of election is adopted from the first. Such is the ecclesiastical procedure: there is now a practice, not very seemly, of publishing in the *London Gazette* the name of the person to be nominated in the letters missive, even before the issue of the *congé d'élire*.

*Mission.*—The election completed, by whatever method, the person designated is known as bishop-elect. He has not yet, however, received any of the powers of a bishop. He must receive these by conveyance from those already possessing them, namely those who are themselves bishops. In one way or another, bishops must *send* him to his church, and they are said to give him *Mission*.

In early times, as we have seen, the neighbouring bishops took part in the election to a vacant see and consecrated the elect: the joint process conferred mission without any exact discrimination of its parts. A bishop-elect invested by a feudal sovereign with crozier and ring was also consecrated by neighbouring bishops, and so received mission; but a tendency to claim some jurisdiction immediately on investiture threatened much confusion of functions, which led to protest against the practice and its abolition. Meanwhile the teaching of the False Decretals had brought in a conception of mission as proceeding in all cases from the pope through the metropolitans, who for this

purpose represented him, to the diocesan bishops. Consequently there grew up with capitular election the practice of *confirmation* by the metropolitan, which is a formal act of ecclesiastical administration giving mission to the elect. He is now called bishop elect and confirmed, and can perform most offices of episcopal jurisdiction. It remains for him to be consecrated. Cases have been known of a bishop elect and confirmed deferring his consecration, obtaining the services of a consecrated coadjutor for those offices which he is himself unable to fulfil.

At the present day in England the king signifies his assent to the election of a bishop by letters patent to the metropolitan commanding him, in accordance with the precedents of 1416, to confirm and consecrate the elect. These letters are therefore commonly known as the Royal Mandate. The metropolitan, usually acting by his vicar-general, then holds a court, at which all opposers of the election are cited to make known their objections. Various attempts have been made during the

last sixty years to induce the court to hear objections laid against the person elected, but the vicars-general have decided that their function is purely administrative ; they have only to ascertain that the election has been duly carried out, and thereupon to confirm the elect. The Courts of Justice, appealed to in the matter, have refused to interfere. Consecration usually follows within a few days of confirmation.

When the metropolitical see is vacant the king addresses his letters patent to four or more bishops of the province, who act accordingly.

When the king himself elects he signifies the election by letters patent to the metropolitan. There is no confirmation, the archbishop proceeding directly to consecration. Mission is thus given, according to the most ancient precedents, by the bishops at least tacitly approving the election and consecrating the elect.

It has frequently happened in the history of the Church that a bishop has been intruded

into a diocese contrary to all canonical rules. Where that has occurred the intruder should, in the rigour of the law, be removed and put under ecclesiastical censure. This has not always been done, and the question arises whether such a bishop has received mission; whether, therefore, he can be recognised as their pastor by the faithful. The answer is found in the elasticity of Ecclesiastical Law, an elasticity the more necessary, as we have seen, in a system which does not use force for compelling obedience. Such a bishop is said to have a colourable title (*titulus coloratus*), and is to be recognised by the faithful unless his promotion has been formally and publicly objected to by those having authority to receive or to reject him. But a mere verbal protest is not enough; they must take steps to secure the more regular promotion of a bishop in his place. Failing this action they are held to acquiesce; their acquiescence confirms his colourable title; and if the impediment to his lawful promotion be of a removable kind, their acquiescence continued after its removal will



confer on him a full title. If, for example, a bishop be intruded into a see which is not canonically vacant, his title will become good, if not resisted, after the death of the lawful holder. If, again, a bishop be uncanonically elected and consecrated to a vacant see, the unprotesting acquiescence of the provincial bishops may be taken to remedy the defect from the first, though the intruder is still liable to disciplinary process. For mission, as distinct from consecration, is conferred, not by any specified action of the bishops, but by their acceptance of the newly promoted into their company, which is picturesquely described by St. Paul as 'giving the right hand of fellowship.' On this ground it has been held that mission is given directly by God, the ecclesiastical act of confirmation or its equivalent being only a public recognition and notification of the fact. Such was the opinion maintained by the Spanish bishops at the Council of Trent.

*Suffragan* bishops, so called, are merely assistants of a diocesan bishop, sharing no part of his responsibility and power of government,

but aiding him in his pastoral work and the administration of the Sacraments. They appear to have no proper mission, but act only as delegates or commissaries. They are elected by the diocesan bishop in agreement with the Crown, and the king signifies the election to the metropolitan with a mandate for consecration. The election of such a bishop to a diocese by letters patent would create a grave irregularity, since there would be no recognised mode of conferring mission; but the irregularity would be healed in the way above described. Diocesan bishops are called in another, and a more proper sense, *suffragans* to the metropolitan.

The royal mandate for consecration is applied for even when a bishop is to be consecrated, by an English archbishop, to a church in which the king has no right of election, as in most of the colonies or in places beyond his dominions. This is done to avoid any possible clashing with the laws of the realm, forbidding promotion of bishops without royal licence; though it is tolerably certain that such laws

regard only bishops domiciled in England. It may be added that a bishop consecrated without royal mandate, if he afterwards returned to England, might lie under some legal disabilities, which are thus avoided.

The promotion of a *curate* involves two acts similar to those required in the case of a bishop. The term election is not, however, in ordinary use for the designation of the person. The manner of conferring mission is less open to variation.

Curates have become distinguished by law as *beneficed* and *unbeneficed*. So far as the title goes, this distinction has reference only to the character of their emolument, which will be dealt with elsewhere; but the distinction corresponds exactly with one of more purely spiritual character. A *beneficed* curate is what we have elsewhere called an *incumbent*. He receives perpetual mission, of which he can be deprived only by disciplinary censure. An *unbeneficed* curate receives a mission which can be withdrawn by the giver, subject to

certain safeguards. The two classes will therefore be treated separately under the heads of *election*—for it will be convenient to retain the word—and *mission*.

A *beneficed curate* is elected by a person or persons having the right of *advowson*. The *advocatus* or *patronus* of a parish church probably came into being with the parochial system itself. He was the distinguished or powerful layman who cared for the temporal interests of the institution, and who was therefore allowed the privilege of nominating the *parochus*. In the legislation of Justinian this right was expressly reserved to those who founded oratories on their own lands and provided by endowment a maintenance for the clergy serving them. It seems to be an error to consider this rule the sole foundation for *advocatio*, or patronage. That institution already existed, and as now existing it has wider foundations. The enactment of Justinian was clearly imperial and not ecclesiastical; but it passed into the customary law of the Church. The civil courts in all

countries, when strong enough to enforce their claim, have held the right of advowson to be at least partly within their sphere of operations, and the ecclesiastical law on the subject has grown up through a constant clash of interests and authorities.

Whatever the original form of patronage may have been in England, the right of advowson became, with the development of feudalism, normally appendant to the manor within which a church was situate, and was exercised by the lord. This simple rule was broken up by the practice of conveying churches to monastic houses. The convent receiving such a gift undertook at first all responsibility for the pastoral care of the parish; this being neglected, the bishops afterwards insisted on the appointment of a *vicar* as curate in charge of the parish; the *vicarage* became a benefice no less than the original rectory, and the convent exercised the right of advowson. Before the conclusion of the fifteenth century it had become a common thing to treat the advowson of a church as a personal inheritance separable

from the manor. When actually separated it was called an *advowson in gross*, and could be conveyed by deed. When the religious houses were suppressed, their patronage of vicarages fell into the hands of individual holders and took this same form of advowson in gross.

The Canon Law, regarding advowson as a spiritual trust, strictly forbade the sale of any right of patronage. When, however, this became appendant to a manor, it inevitably passed by purchase if the manor were sold. This made it unreasonable to forbid the sale of an advowson in gross, and the lawfulness of such sale was speedily established. It was recognised even while the claim of the Church to exclusive jurisdiction over ecclesiastical property was still upheld. The power of sale was however restricted. The right of nomination for a single occasion, or *next presentation*, might not be sold. The advowson itself was not transferable, except by the death of the holder, while the church affected was actually vacant. The principle in both cases was the same. The *exercise* of the right might not be offered

in sale. Eventually the right of advowson, as a mere incident of property, passed in England entirely into the cognizance of the temporal courts, which determine, by writ of *quare impedit* or otherwise, the person in whom the right is vested.

Grave abuses and scandals connected with the sale of advowsons led to the enactment of the *Benefices Act* in 1898, by which the matter is now regulated. With the mode of transfer we are not concerned, but two effects of the Act may be noticed. It makes void, after the lapse of existing interests, any grant of a *next presentation*, and it allows a purchaser only a limited right of nomination for the twelve months next following any transfer by sale.

An advowson may now be held by a public officer in right of his office, by an individual person, by a corporation sole or aggregate, or by trustees. The patron, however constituted, has the right of *presenting* a clerk to be admitted to the cure of souls. If the bishop hold the right of patronage, there is another procedure to be noted below. In some few parishes there

is no advowson, and the parishioners elect a presentee.

*Lapse.*—If a patron fail to present within six months of a church becoming vacant, his right lapses to the bishop. If a bishop fail to present within six months, his right lapses to the metropolitan. The metropolitan's right lapses similarly to the Crown. There appears to be no remedy if the Crown fail to present. If a patron's nominee be rejected on the ground of some disqualification within his own cognizance, lapse dates from the vacancy; if on some ground, such as insufficient learning or heterodoxy, of which he is not supposed to be a judge, then the period of lapse begins from the date of refusal.

*Crown Rights.*—During the vacancy of a see the king presents to all churches the advowson of which belongs to the bishop. He also presents to any church vacated by the promotion of its incumbent to a bishopric in England.

*Mission.*—The presentation is made in writing to the bishop, to whose office it belongs to give mission to the person presented. Peculiar



jurisdictions, within which others than the bishop performed this function by ancient privilege, have disappeared; and the anomalous *donatives*, which were benefices granted by the patron without the intervention of any ecclesiastical authority, were abolished by the Act of 1898.

The bishop gives mission by *institution* or by *licence*. The particular instrument is determined by the character of the benefice; its spiritual effect is the same in both cases. To a rectory or properly constituted vicarage the nominee is instituted; to a perpetual curacy he is licensed. In order to employ a common term we may speak of the bishop *admitting* him to the cure of souls.

Since the sixth century the bishop has been held bound to admit any suitable person presented by a lawful patron. He has to judge the suitability or idoneity of the presentee; but his discretion is regulated by law and is not arbitrary. He is controlled partly by Ecclesiastical Law, and partly also by the Temporal Law which guards the rights of the patron.

Thus a presentee refused admission may apply to the metropolitan by *duplex querela* for an order requiring the bishop to admit him; or the patron may apply to the king's courts for a writ of *quare impedit* directed to the same end. These measures are, however, to a great extent superseded by the legislation of 1898, which appears to be definitely accepted by the bishops as modifying the law of the Church as well as of the State.

*Idoneity.*—(1) The presentee must be in holy orders. Formerly any clerk might be presented, and was admitted on his promise to proceed to holy orders. The 39th canon of 1603 required the production of letters of orders, thus excluding any one below the degree of a deacon; but further, as the law now stands the bishop may refuse a presentee who has been less than three years in the diaconate. The Act of Uniformity, 1661, made it legally impossible for any but a priest to hold a benefice. A deacon may be presented, and admitted at once on his ordination to the priesthood, but the bishop is free to

reject him. Until recent years this mode of promotion was not uncommon: it is now almost or quite unknown.

(2) The presentee must be of good character. He is usually required to produce testimonials similar to those demanded of candidates for ordination, but the bishop cannot insist on these if other satisfactory evidence is tendered. The temporal courts have held that a bishop may refuse admission to a presentee whom he personally knows to have committed on some previous occasion an offence punishable by deprivation; but it is doubtful whether this decision is in accordance with ecclesiastical law, which seems to exclude only those actually under censure, or notoriously liable to it. The bishop may reject a presentee whom physical or mental infirmity renders unfit for the discharge of his duties, one who is involved in pecuniary embarrassment of a serious kind, or one who has shown grave misconduct or negligence in any ecclesiastical office.

(3) The presentee must have sufficient learning. The bishop is entitled to examine

him on this head, and the temporal courts, at least, have held that they cannot interfere with his discretion in this respect. The new tribunal erected by the Act of 1898, being of a mixed character, might prove less modest.

(4) The presentee must be orthodox. His orthodoxy is usually taken as sufficiently guaranteed by the declaration of assent to the Thirty-nine Articles which is required of him on admission, but the bishop is not bound to accept that as sufficient, and may reject him on the ground of anything which he has publicly uttered, or possibly if he refuse to answer on examination, or answer unsatisfactorily.

The most important ground for rejection under the second of the above heads is a charge of *simony*. If the presentee has to the knowledge of the bishop been privy to any kind of bargain involving the tender, payment, or promise of any consideration whatsoever for his presentation, or if the vacancy has been procured by such means for his advantage, he ought to be rejected. Since the eleventh century three

modes of simony have been recognised. The taint may be incurred *per munus* (1) *linguae*, by currying favour or by importunate begging ; (2) *obsequii*, by rendering or promising to render any sort of subservience ; (3) *pecuniae*, by a payment or promise to pay anything of monetary value.

If the bishop reject a presentee on the ground of heterodoxy or of some offence committed in regard to the ritual of the Church, his refusal to admit may be traversed by the ancient methods of *duplex querela* or *quare impedit*. If he refuse on any other ground he may be cited before a mixed tribunal, created by the Benefices Act of 1898, in which the metropolitan sits, together with a judge appointed by the Lord Chancellor, to review his decision. In this strangely constituted court, which does not appear to have any ecclesiastical character, the judge decides, without appeal, all questions of law and fact. If he rules that the bishop's reasons for refusing admission are unfounded or insufficient in law, the metropolitan orders admission. If he finds

them proved and sufficient, the metropolitan then reviews the bishop's discretion and decides finally whether admission ought to be granted or refused, and makes order accordingly.

When the bishop has resolved, on his own discretion or on the order of the metropolitan, to accept a presentation, he signifies to the churchwardens of the parish his intention to admit the presentee, and this notification is posted at the church-door. One month after such notice he may proceed to the admission. He may apparently withdraw his consent during this period.

Before proceeding to admission the bishop requires of the presentee the declaration of assent to the Thirty-nine Articles of Religion and to the Book of Common Prayer, the oath of canonical obedience, and the oath of allegiance as made and taken by candidates for holy orders, and also a declaration that he knows of no taint of simony in his presentation. The bishop then proceeds to institute or to license him.

*Institution* is performed by the bishop or his commissary reading an instrument executed under his seal, the presentee kneeling before him and holding the seal.

The *licence* of a perpetual curate is granted by simple letters under the bishop's seal.

By institution or by licence the curate receives mission and the spiritual charge of the parish. An instituted clerk, however, has to be *inducted* (p. 263) before entering fully upon office.

*Collation* is the term used when a bishop himself exercises the right of patronage. In this case he notifies to the churchwardens the name of the person whom he intends to promote, and then proceeds as by institution, the wording of the instrument being slightly varied.

*Unbeneficed curates* are appointed under three separate conditions : (1) to take charge of a parish while the incumbency is vacant, (2) to take charge during the non-residence or inhibition of the incumbent, or (3) to assist the incumbent in his charge. The mode of

election varies with the conditions; the mode of giving mission is invariable.

*Election.*—(1) When a church is vacant the bishop himself may appoint a curate to the charge; but if the vacancy is expected to be short the needs of the parish are usually supplied with less formality by visiting priests.

(2) A non-resident incumbent or an incumbent inhibited from the performance of his duties may be required by the bishop to nominate a curate, and if he refuse to do so, the bishop may himself appoint. In some cases of inhibition the bishop may at once appoint.

(3) An incumbent performing the duties of his cure may nominate an assistant-curate. If a bishop have reason to believe that the duties of any incumbent are inadequately performed, he may issue a commission of inquiry, and if the commission report adversely he may require the incumbent to nominate a curate; failing such nomination, he may himself appoint. The incumbent has an appeal to the



metropolitan. If the reported inadequacy is found to be due to the negligence of the incumbent, the bishop may at once appoint a curate.

The nomination must be made according to a prescribed form, signed both by the incumbent and by the nominee.

*Mission.*—The bishop, on receiving the nomination, requires of the nominee his letters of orders and testimonials of good conduct, the declaration of assent, the oaths of canonical obedience and of allegiance, all as in the case of candidates for holy orders. He then gives him licence under his seal, and so admits him to the cure of souls.

*Reading in.*—A curate, whether beneficed or unbeneficed, is required, on the first Sunday after his admission, to read the whole of the Thirty-nine Articles of Religion, together with a slightly modified form of the declaration of assent, publicly in the time of divine service. By this formality he is said to *read himself in*.

*Plurality* is the tenure by one person of

several ecclesiastical offices at the same time. Strictly forbidden by the rigour of Canon Law, it has been allowed at various times by a lax administration of discipline. The present English practice allows it freely except in regard to certain dignities and benefices with cure of souls. No priest can hold two or more benefices with cure of souls except by a dispensation from the Archbishop of Canterbury, which is granted only under stringent conditions regarding the neighbourhood of the cures and the amount of their emoluments.

*Avoidance of Curacy.*—A priest charged with the cure of souls cannot divest himself of his responsibility at his own pleasure. He holds it until death, unless it be avoided in one of several ways recognised by law.

(1) *Deprivation* is the avoidance of a curacy by ecclesiastical censure passed on the curate. In certain cases when a curate has been convicted by a public tribunal of a disgraceful offence, the bishop has power to declare his cure void without any formal process. He

may take the same course in certain cases of prolonged or repeated sequestration (p. 277).

(2) *Resignation* is the voluntary act of a curate praying the bishop to relieve him of his charge. A beneficed curate, having obtained permission, resigns by a formal instrument. An unbeneficed curate resigns by a simple notice to the incumbent and to the bishop, which must run for three months unless the bishop consent in writing to a shorter period. The resignation takes effect without further formality, unless the bishop refuse his consent.

(3) *Promotion* to a benefice with cure of souls vacates any cure previously held, unless the holder receive a licence for plurality.

(4) *Revocation of Licence*.—The bishop has power, subject to an appeal to the metropolitan, to revoke the licence of any unbeneficed curate after giving him sufficient opportunity for showing cause to the contrary. The bishop may also revoke such a licence without any reason alleged, at the request of the incumbent giving six months' notice to the curate.

A newly admitted incumbent may within six months give any previously licensed curate six weeks' notice to vacate his curacy, which will then become void without reference to the bishop.

APPENDIX TO CHAPTERS  
V—VII

A

FORM OF LETTERS TESTIMONIAL *to be signed by three beneficed Clergymen, and countersigned by their respective Diocesans if they are not beneficed in the Diocese of the Bishop to whom the letters are addressed.*

To the Right Reverend N., Lord Bishop of N.

Whereas our well-beloved in Christ, N. N., of  
College, B.A. [*or other degree*], hath declared to  
us his intention of offering himself a Candidate for the  
sacred office of Deacon [*or Priest*], and for that end  
hath required of us Letters Testimonial of his good life  
and conversation: We therefore, whose names are  
hereunto subscribed, do certify that the said N. N. hath  
been personally known to us for the space of three years  
last past [*or such shorter period as may have elapsed  
since he quitted college*]: that we have had opportunities  
of observing his conduct; that during the whole of  
that time we verily believe him to have lived, in all  
respects, piously, soberly, and honestly; nor have we  
at any time heard anything to the contrary thereof;  
nor hath he at any time, as far as we know or have  
heard, maintained, said, or written anything contrary to  
the doctrine or discipline of the Church of England;  
and, moreover, we do believe him in our consciences

to be, as to his moral conduct, a fit person to be admitted into the sacred Ministry.

Witness our hands this            day of            in the year  
of our Lord 19   .

*When the Letters Testimonial are given for a Clerk presented or nominated to a cure of souls, the first sentence of the above is omitted, and the Letters begin: We, whose names are hereunder written, testify and make known that N. N., Clerk, B.A. [or other degree], presented [or nominated] to serve the cure of            , in the county of            , and in your lordship's diocese, hath been personally known to us, etc., as above.*

## B

## FORM OF 'SI QUIS'

Notice is hereby given, that N. N. [of            College,            , B.A.], now resident in this Parish, intends to offer himself as a Candidate for the holy office of a Deacon [or Priest] at the ensuing Ordination of the Lord Bishop of            ; and if any person knows any cause or just impediment why the said N. N. ought not to be admitted into Holy Orders [the Holy Order of Priest], he is now to declare the same, or to signify the same forthwith to the Lord Bishop of            .

We certify that, on Sunday, the            day of            instant, the foregoing Notice was publicly and audibly read by the undersigned C. D. in the Church [or Chapel] of            , in the time of divine service, and that no impediment was alleged.

Witness our hands this            day of            19   .

C. D., *Officiating Minister.*

E. F., *Churchwarden.*

## C

## FORM OF DECLARATION OF ASSENT

I, N. N. [about to be admitted to the Holy Order of ], do solemnly make the following declaration :—  
I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer and of the Ordering of Bishops, Priests, and Deacons. I believe the Doctrine of the Church of England, as therein set forth, to be agreeable to the Word of God ; and in Public Prayer and Administration of the Sacraments I will use the Form in the said Book prescribed, and none other, except so far as shall be ordered by lawful authority.

*A newly admitted Curate, at his Reading in, adds after Articles of Religion the words which I have now read before you.*

## D

## OATH OF CANONICAL OBEDIENCE

I, N. N., do swear that I will pay true and canonical obedience to the Lord Bishop of      and his successors, in all things lawful and honest. So help me God.

## OATH OF ALLEGIANCE

I, N. N. [about to be admitted to the Holy Order of ], do swear that I will be faithful and bear true Allegiance to His Majesty King N., his heirs and successors according to law. So help me God.

## E

## FORM OF PRESENTATION (NOT OBLIGATORY)

To the Right Reverend Father in God, N., Lord Bishop of      , or in his absence to his Vicar-General

in Spirituals, or to any other person having sufficient authority in this behalf: I, N. N., true and undoubted patron of the [rectory] of the parish church of \_\_\_\_\_, in the county of \_\_\_\_\_, and in your diocese of \_\_\_\_\_, now vacant by the [death *or* resignation, *or otherwise as the case may be*] of N. N., the last incumbent there, do present unto you, N. N., Clerk [Master of Arts], humbly requesting that you will be pleased to admit the said N. N. to the said church, and to institute and cause him to be inducted into the same, with all its rights, members, and appurtenances, and to do and execute all other things in this behalf which shall belong to your episcopal office. In witness whereof, I have hereunto set my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19 \_\_\_\_\_.

## F

## FORM OF NOMINATION TO A CURACY

(1) *If the Incumbent is Non-resident*

To the Right Reverend N., Lord Bishop of \_\_\_\_\_.

I, A. B., \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, and your Lordship's diocese of \_\_\_\_\_, do hereby nominate E. F., Bachelor of Arts [*or other degree*], to perform the office of curate in my church of \_\_\_\_\_ aforesaid, in the place of G. H., late licensed curate thereof [*this to be omitted if not in the place of another curate*], and do promise to allow him the yearly stipend of \_\_\_\_\_, to be paid by equal quarterly payments [*as to amount of stipend see below*], with the surplice fees amounting to \_\_\_\_\_ per annum [*if they are intended to be allowed*], and the use of the glebe-house, garden, and offices which he is to occupy [*if that be the fact; if not, state the reason, and name where and at what distance from the church the*



*curate purposes to reside*]: and I do hereby state to your Lordship that the said E. F. does not serve any other parish as incumbent or curate; and that he has not any cathedral preferment nor any benefice, and does not officiate in any other church or chapel—[*if, however, the curate does serve another parish as incumbent or as curate, or has any cathedral preferment, or benefice, or officiates in any other church or chapel, the same respectively must be correctly and particularly stated*]: that the net annual value of my said benefice, estimated according to the Act 1 and 2 Vict. c. 106, secs. 8 and 10, is \_\_\_\_\_, and the population thereof, according to the latest Returns of Population made under the authority of Parliament, is \_\_\_\_\_: that there is only one church belonging to my said benefice [*if there be another church or chapel, state the fact*]: and that I was admitted to the said benefice on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ in the year  
of our Lord 19 \_\_\_\_\_.

*Declaration required to be added by  
28 and 29 Vict. c. 122*

I, A. B., Incumbent of \_\_\_\_\_, in the county of \_\_\_\_\_, *bona fide* undertake to pay to E. F. of \_\_\_\_\_, in the county of \_\_\_\_\_, the annual sum of \_\_\_\_\_ pounds as a stipend for his services as Curate, and I, E. F., *bona fide* intend to receive the whole of the said stipend.

And each of us, the said A. B. and E. F., declares that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe-house; and that I, A. B., undertake to pay the same, and I, E. F., intend to receive the same, without any deduction or abatement whatsoever.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(2) *If the Incumbent is Resident*

To the Right Reverend N., Lord Bishop of .

I, A. B., of , in the county of , and your Lordship's diocese of , do hereby nominate E. F., Bachelor of Arts [*or other degree*], to perform the office of assistant-curate in my church of aforesaid, in the place of G. H., late licensed curate thereof [*this to be omitted if not in the place of another curate*]; and do promise to allow him the yearly stipend of paid by equal quarterly payments;—And I do hereby state to your Lordship that the said E. F. intends to reside in the said parish [*if E. F. does not intend to reside in the parish, then state at what place he intends to reside, and its distance from the said church*]; and that the said E. F. does not serve any other parish as incumbent or curate; and that he has not any cathedral preferment or benefice, and does not officiate in any other church or chapel—[*if, however, the curate does serve another parish, as incumbent, or as curate, or has any cathedral preferment, or a benefice, or officiates in any other church or chapel, the same respectively must be correctly and particularly stated*].

Witness my hand this day of , in the year of our Lord 19 .

*Declaration required to be added by  
28 and 29 Vict. c. 122*

I, A. B., Incumbent of , in the county of , *bona fide* undertake to pay to E. F. of , in the county of , the annual sum of pounds as a stipend for his services as Curate, and I, E. F., *bona fide* intend to receive the whole of the said stipend.

And each of us, the said A. B. and E. F., declares that no abatement is to be made out of the said stipend in

respect of rent or consideration for the use of the glebe-house; and that I, A. B., undertake to pay the same, and I, E. F., intend to receive the same, without any deduction or abatement whatsoever.

Witness our hands this      day of      19 .

## G

### FORM OF DECLARATION REGARDING SIMONY

I, N. N., hereby solemnly and sincerely declare in reference to the presentation made of me to the rectory [*or vicarage, etc.*] of      as follows :—

(1) I have not received the presentation of the said rectory [*or vicarage, etc.*] in consideration of any sum of money, reward, gift, profit, or benefit, directly or indirectly given or promised by me, or by any person to my knowledge or with my consent, to any person whatsoever, and I will not at any time hereafter perform or satisfy any payment, contract, or promise made in respect of that presentation by any person without my knowledge or consent.

(2) I have not entered, nor to the best of my knowledge and belief has any person entered, into any bond, covenant, or other assurance or engagement, otherwise than as allowed by sections one and two of the Clergy Resignation Bonds Act, 1828, that I should at any time resign the said rectory [*or vicarage, etc.*].

(3) I have not by myself, nor to my knowledge has any person on my behalf, for any sum of money, reward, gift, profit, or advantage, or for or by means of any promise, agreement, grant, bond, covenant, or other assurance of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly

procured the now existing avoidance of the said rectory [or vicarage, etc.].

(4) I have not, with respect to the said presentation, been party or privy to any agreement which is invalid under section one, subsection three of the Benefices Act, 1898.

Dated this        day of        19 .

[Signed] N. N.

## H

### FEEs PAYABLE ON PROMOTIONS

	Vicar-General.	Registrar.	Bishop's Secretary.
	£ s. d.	£ s. d.	£ s. d.
Ordination . . . . .	.....	0 5 0	2 2 0
Copy of Letters of Orders . . . . .	.....	.....	0 10 0
Licence to Curacy . . . . .	.....	.....	0 10 0
Copy of Licence, to be paid for by the Incumbent . . . . .	.....	0 3 0	.....
Licence of Lecturer . . . . .	.....	0 3 0	2 2 0
„ Schoolmaster . . . . .	.....	0 3 0	1 1 0
„ Minister in private Chapel . . . . .	.....	0 3 0	2 2 0
„ Chaplain in a public Institution . . . . .	.....	0 3 0	1 1 0
„ Workhouse Chaplain . . . . .	.....	0 3 0	0 10 6
General Licence to officiate . . . . .	.....	0 3 0	0 10 6
Licence of Minister in a Peel District . . . . .	.....	.....	1 0 0
Institution or Collation to a Benefice* . . . . .	0 16 8	2 2 4	4 4 0
Licence to a Perpetual Curacy*	0 9 4	1 15 8	2 2 0

\* With additional fees amounting to 12s. 6d. in some cases payable to minor officials.

For *Induction* a fee is payable to the archdeacon's officials, varying from £1, 3s. to £1, 7s. 6d.

For the admission of Churchwardens a fee of 18s. is payable to the archdeacon's officials.

## CHAPTER VIII

### OF ECCLESIASTICAL JURISDICTION

THE effect of Mission is to give *Jurisdiction*. This term is derived from the Roman Civil Law, in which it originally stood for the two-fold function of the Praetor: to define the law by an *edictum* and to apply it to a given case by a *decretum*. This double conception adhered to the term through all developments, and passed with it into the language of the Church. The word, however, has attained a wider extension of meaning, and signifies any lawful exercise of authority, legislative, judicial, or executive. The sharp severance of these three functions of government, characteristic of the modern state, has no place in the administration of the Church. Supreme authority is committed by the Lord to the chief pastors, the bishops, who exercise it

personally in all its functions, though they may and do commit certain functions to subordinates. The bishops therefore have an original jurisdiction ; all others receiving mission from them have a derived jurisdiction.

We speak of that which is purely spiritual, a jurisdiction conceived and exercised only for the soul's health of the subject, and concerned only with faith and morals and the practice of Christian virtues. But, as we have seen, Ecclesiastical Law became conversant with matters of a totally different kind. It secured in varying measure the control of ecclesiastical property, of criminal procedure against clerks, of testaments, of trusts and contracts, and especially of that most important matter, the contract of marriage. When men began, during the later middle ages, to scrutinise more closely the relative functions of temporal and spiritual powers, it was seen that these things belong essentially to the business of the temporal. But the force of custom was too strong, and

the practical confusion of powers was too great, to allow an immediate transfer of operations. The nascent political theory of the time was satisfied by a legal fiction attributing these functions of the ecclesiastical order to an original grant made by the temporal power. Such legal fiction was the basis of much feudal law. In this case, as in others, it was historically false. The ecclesiastical courts took cognizance of these matters of their own motion, partly as being the natural guardians of morality, partly as being the only tribunals capable of dealing with such things; and they exercised authority because men bowed to their authority. But this authority was continually reinforced by the secular arm, without which it was powerless against the recalcitrant; and when prince and magistrate throughout Europe became conscious of wider duties and responsibilities, more conscious also of their real power, a change was inevitable. The system of Ecclesiastical Law was too intricate, and its practice too homogeneous, to allow an easy sorting of

its parts, the purely spiritual and those of mixed character. Add to this that the distinction of Church and State was but slowly supervening on the distinction of spiritual and temporal. Consequently there was on the one hand an inevitable tendency to regard all ecclesiastical jurisdiction as derived from the prince or supreme magistrate, the use of a term so proper to the Civil Law helping the conception; and on the other hand a dogged resistance to the intrusions of the temporal power. In England, as in other countries, the royal courts slowly drew to themselves their proper business, the development of Chancery jurisdiction being a notable step; the spiritual courts reluctantly yielded the ground. It would have been well for the Church if the whole debatable ground had been surrendered, and a complete severance of functions effected. The spiritual courts retained much that was not theirs on any sound political theory, and so made almost necessary the Tudor contention that ecclesiastical jurisdiction was wholly derived from the Crown.



Little now remains in England of the mixed jurisdiction formerly exercised by the ecclesiastical order. Criminal jurisdiction over clerks is gone, though some of its terms linger in disciplinary process. Testamentary and matrimonial causes are transferred to the High Court of Justice. Brawling in Church is dealt with by the magistrate. The recovery of tithe, or its modern equivalent, is sought from the County Court. But enough remains to keep alive the fiction of devolution from the Crown. A judicial or administrative order may still affect rights of property, as when a man is deprived of a benefice, when a faculty is granted for alienation of consecrated ground, when a sequestration is put in force. So long as such an order has immediate legal effect the jurisdiction is mixed. Even more important, though seldom used, is the power of enforcing obedience by imprisonment under a writ *de contumace capiendo*; for though the attachment is made by order of the High Court of Justice, and not of the spiritual court, yet the writ goes as a matter of right on the signification

of the spiritual court, and it appears from the last notable case that the spiritual court alone can legally terminate the imprisonment. So long as this power is held in reserve, the spiritual court has a mixed jurisdiction.

It might be well to put an end to this, leaving obedience to be purely a matter of conscience, and leaving the determination of all property rights affected by ecclesiastical procedure to the civil courts. On the other hand there is great need of spiritual jurisdiction in matrimonial causes, to proceed independently of that of the High Court of Justice, for the determination not of legal status but of moral duties.

As things are, ecclesiastical jurisdiction has a legal as well as a spiritual basis, and is regarded in two separate aspects. To the lawyer an ecclesiastical court is a court of *inferior jurisdiction*, subject on that account to the control of the High Court, specifically exercised by the writ of *prohibition* which restrains an inferior court from any excess of jurisdiction. But looking at the matter from

a purely ecclesiastical point of view, and regarding the spiritual courts not as *inferior* but as entirely separate and independent courts, we must nevertheless recognise the right of such intervention in a more general form. The constituent members of the Church or of a Church court are also subjects of the Crown, answerable to the Crown for any act of injustice. It is therefore inevitable, on all sound political theory, that the civil courts shall restrain the spiritual courts, by *mandamus*, *injunction*, or other suitable process, from the perpetration of injustice whether positive or negative. On this head the practice of the United States courts, dealing with ecclesiastical courts which have no mixed jurisdiction whatever, deserves a careful study.

Having noted these complications we may now consider ecclesiastical jurisdiction purely in its spiritual aspect, disregarding its temporal incidents.

Jurisdiction, as understood in the widest sense, falls naturally under the three heads of

Legislative, Executive, and Judicial. Three other cross distinctions must here be noticed.

*Ordinary and Delegate.*—*Ordinary* jurisdiction is that which is by law inseparably annexed to a certain office, and so resides in the person holding that office. *Delegate* jurisdiction is committed to a specified person for a specified purpose by one who holds ordinary jurisdiction; it ceases when the purpose for which it is given is accomplished; it may be withdrawn at will by the grantor; it lapses with his removal, by death or otherwise, from his office. A familiar example of such delegate jurisdiction is that of a Commissary appointed by a bishop on occasion to institute or license a priest to a curacy; standing examples are seen in the *Surrogates* of ecclesiastical courts. It is a rule of law that a delegate cannot sub-delegate his functions, unless that power be expressly granted. A jurisdiction, originally delegate, becomes ordinary by custom, the person appointed being secured in it by law. In this way the *Officials* and *Vicars-General* of bishops, originally delegates, acquired ordinary

jurisdiction. It seems probable that assistant curates, originally the mere delegates of incumbents, since they are now appointed by regular process of law and may not be removed at pleasure, have made the same acquisition. The bishop or his vicar regularly administering the diocese, when canonical procedure is in question, is commonly called the *Ordinary*, that is to say, *Judex Ordinarius*.

*Voluntary and Contentious.*—This distinction is almost equivalent to that between executive and judicial functions; the correspondence fails only because voluntary jurisdiction is sometimes exercised, as well as contentious, under judicial forms. *Voluntary* jurisdiction is that which is exercised in behalf of a single party applying for its operation. *Contentious* jurisdiction is that which is exercised either *inter partes*, between litigants, or against a resistant party. Examples of voluntary jurisdiction are institution or licence to a curacy, orders respecting dilapidations, marriage licences, faculties. A faculty granted for the removal of an ornament from a church, even if opposed,

is an exercise of voluntary jurisdiction, though the procedure may be highly contentious, for the opponents appear only to inform the mind of the bishop or his vicar making the order. A parishioner, on the other hand, praying the bishop to order the removal of an ornament by the incumbent or churchwardens, applies for an exercise of *contentious* jurisdiction, even if the application be not actually opposed. All disciplinary process falls under the head of contentious jurisdiction, however complete a submission the penitent may render.

*Legislative and Dispensative* jurisdiction is the exercise of the power of binding and loosing. It is obvious that the same power which makes a law can relax the law, either generally or by privilege in a particular instance. Primarily, the same *organ* of power must act in both cases. A diocesan custom or constitution, allowed or made by the bishop, can be relaxed by the bishop; a provincial custom or constitution by the provincial synod, and so on. But by a convention of law the relaxing power is entrusted in certain

cases to an inferior authority; a bishop is allowed to relax a provincial rule, or even one of higher origin. Such relaxing is known as *dispensation*. A dispensation is a *privilegium*, a law affecting individuals without altering the general law. It is not a permission to disobey the law, it is a quasi-legislative act, making a general rule inapplicable to a particular case. Examples are the ordinary marriage licence, dispensing with the publication of banns, the licence permitting a curate to go out of residence, the special marriage licence, granted in England only by the Archbishop of Canterbury, dispensing with the law of domicile and the obligation to be married *in facie ecclesiae*, a dispensation from fasting, for eating flesh meat on days of abstinence, and the like.

The distinction between the *forum externum* and the *forum conscientiae*, already mentioned (p. 26), must also be borne in mind.

All ecclesiastical jurisdiction is radically in the bishops ruling their several dioceses, or acting in common with apostolic authority over the whole Church. This gives two modes of

exercise, diocesan and conciliar. But further, a bishop gives mission to curates, who thus acquire a certain jurisdiction within their parishes. There are thus three modes, parochial, diocesan, and conciliar, nor is it necessary for our purpose to analyse further.

*Parochial* jurisdiction, the authority of a *parochus* or curate, is within narrow limits legislative and executive *in foro externo*, judicial also *in foro conscientiae*. The curate can make certain rules about the conduct of divine worship, fixing the hours and regulating small matters not determined by the prescribed ritual. He presides in the vestry meeting, and exercises great control over its proceedings. The incumbent has extensive and ill-defined powers of commanding assistant-curates; he can make and appoint a minor clerk. He has, however, no court in which he can sit judicially for any purpose, nor can he impose censures *in foro externo*. The manor-court held by some rectors is a purely temporal tribunal. It is one of the distinctive doctrines of Calvinist presbyterianism that a *parochus*,



with or without assistant-elders, can impose penance, excommunicate, and otherwise act judicially *in foro externo*. On the other hand, *in foro conscientiae* the curate exercises penitential jurisdiction. It is debated whether, according to the present discipline of the English Church, every priest, if licensed to administer the Sacraments, has not this power at large. The safer opinion seems to be that a curate alone has it normally, but that he can delegate his jurisdiction to any priest so licensed. It will follow that a priest not licensed to a parish may not give penance or absolution within that parish save by the express appointment of the curate. On the other hand it seems clear, that according to the present discipline of the English Church a curate or his delegate is not restricted in the exercise of this jurisdiction to actual parishioners, but may minister penance and absolution to any one resorting to him.

The incumbent certainly has ordinary jurisdiction within his parish, and can delegate, subject to the rules of the diocese in that

regard. It is not so clear what is the status of an assistant-curate, or of one taking charge of the parish in the incumbent's absence. Originally a delegate, he may now have acquired by law a subordinate ordinary jurisdiction. While the question remains doubtful, he ought not to attempt delegation. Reference should be made, if delegation be necessary, to the incumbent, or in his absence to the bishop.

A curate has certain powers of dispensation *in foro conscientiae*; in particular with regard to rules of fasting and abstinence. When in doubt of his own power he must refer to the bishop, who also has the power, if he choose to exercise it, of reserving certain cases to himself or to an appointed *Penitentiary*. In cases so reserved, a curate must not himself give penance or absolution.

It appears that the cathedral clergy, *clerici in matre*, have the same jurisdiction *in foro conscientiae* within the precincts of the mother-church which curates have within their respective parishes. In colleges, hospitals, religious

houses, and similar institutions, a chaplain formally authorised by the bishop has a like authority.

*Diocesan jurisdiction* is exercised by the bishop in person or by deputy. A deputy may have either ordinary or delegate jurisdiction. The *Official-principal* and the *Vicar-general* have ordinary jurisdiction throughout the diocese; an *Archdeacon* and his *Official* have it within a certain district. *Peculiars*, now for the most part done away, are churches or districts within which the whole or the greater part of the diocesan jurisdiction is vested in a special Ordinary. The Ordinary for certain parishes in the city of London was at one time the Dean of Arches, appointed by the Archbishop of Canterbury. The Dean of Westminster, subject to the visitatorial authority of the Crown, is the Ordinary of the Abbey and its precincts. A *Commissary* or a *Surrogate* has delegate jurisdiction.

*Visitation* is a power, exercised at stated intervals by a bishop or an archdeacon, of

suspending the exercise of inferior jurisdictions during inquiry into the conduct of their possessors. The procedure is to issue *Articles of Inquiry* for answer, and while the visitation is in progress a temporary delegate jurisdiction is allowed to all persons affected.

A bishop is required by law to appoint archdeacons according to settled custom. He is also required to appoint a vicar-general and an official-principal. These latter are appointed by letters patent, in which their functions are accurately set out. It is customary to appoint the same person to both offices, and he is usually called the bishop's *Chancellor*. It is even doubted whether the bishop could now sever the two offices. The chancellor is, with few exceptions, a layman, but this is by a comparatively recent innovation, and a priest has lately been appointed. For the purposes of the mixed jurisdiction created by the Clergy Discipline Act of 1892, the bishop is empowered to appoint as deputy-chancellor a barrister of seven years' standing or the 'holder of a judicial appointment.'

This is probably intended to be done in case the chancellor is not a person learned in the law. The ecclesiastical position of a deputy so appointed is not easily determined, and he seems to possess only the mixed jurisdiction set up by the statute.

The *legislative* jurisdiction of a diocese is properly exercised by the bishop in synod, with the consent of the clergy; but by custom a bishop may make certain regulations, as in regard to details of divine worship (*ius liturgicum*), without synodical publicity. It is considered that an order so made lapses with the removal of the bishop making it, while a synodical order continues in force until abrogated. A bishop may not legislate contrary to provincial or more general constitution or custom.

The *dispensative* jurisdiction of a bishop is exercised by himself in person or by his vicar-general; in case of need by a commissary. The vicar-general usually does his part through the machinery of the Consistory Court, the surrogates performing minor acts

of jurisdiction. Marriage licences are thus granted, which are nothing else but dispensations from the law requiring publication of banns. The bishop in person grants important dispensations by virtue of his mixed jurisdiction in the matter of dilapidations, regulated chiefly by Statute Law. He also grants in person dispensations from rules of fasting and abstinence, usually on the application of a curate. In dispensing a curate from residence he is restrained by the Pluralities Act, now sufficiently incorporated, as it seems, in Ecclesiastical Law, from allowing more than six months' leave of absence, unless with the concurrence of the metropolitan.

All this *in foro externo*. The bishop himself, or a penitentiary appointed by him, has dispensative jurisdiction *in foro conscientiae* throughout the diocese, and the bishop, as above said, may reserve cases to his own cognizance.

The *voluntary* jurisdiction of a diocese, other than that connected with dispensations, is divided by custom and convenience between

the bishop himself, the vicar-general, and the archdeacons, with the regular help of surrogates and the occasional delegation of a commissary. The archdeacon usually *inducts* a clerk to a rectory or vicarage, and admits churchwardens. The bishop or the vicar-general takes charge of all *vacant* parishes, sequestrating the benefice and appointing, if need be, a curate in temporary charge, institutes or licenses curates, licenses clerks at large, admits or directs the admission of clerks to places in the cathedral church, grants or withholds faculties for alterations in parish churches, or for the alienation of church lands or goods. The bishop alone, or his commissary, makes orders with regard to dilapidations, determines, if desired, the appropriation of alms collected in parish churches, allows religious houses and receives vows of religion, grants the right of a chapel to extra-parochial institutions.

The *contentious* jurisdiction of a diocese *in foro externo* is exercised through the machinery of a court known as the *Consistory*, in which

the bishop, the official-principal, and the vicar-general are alike judges. The bishop is supreme, and presides when present; in some dioceses, though not in all, he reserves the recognition of certain causes to himself. But with the others he forms, as it is said, *unum consistorium*, and no appeal is possible from them to him. Within their own districts the archdeacons may hold a court of contentious jurisdiction, in which the official is a subordinate judge.

*Surrogates* are appointed as subordinate judges, whether of the archdeacon's or of the bishop's court, for expediting minor business.

The consistory court and the archdeacon's court are alike concerned with *disciplinary* process and with *civil* process. The latter is so called from its resemblance to the procedure *inter partes* of the Civil Law. At one time it was vast in amount and of the greatest importance. It was originally founded on the injunction of St. Paul against going to law before unbelievers. The faithful were counselled, and the clergy were by many Councils



required, to bring their differences before their bishop for arbitration. When the empire became Christian this arbitrage acquired, where the parties were clergymen, the force of judicial decrees. Later, as we have seen, the spiritual courts drew to themselves whole fields of judicial business, which the civil courts have gradually resumed into their own hands. There seems to be nothing to prevent the arbitration of bishops in the ancient fashion, but the character of the civil courts in our day affords no excuse for refusing to plead before them. This kind of jurisdiction in the episcopal court is therefore narrowed down in practice to suits respecting the ornaments of a parish church, and to questions of costs arising out of these or other proceedings.

The *disciplinary* process remains. The archdeacon's court has an inferior jurisdiction, which has rarely been exercised for many years past, but there is no reason for supposing it obsolete. The bishop's consistory may either hear appeals from the archdeacon's court or may act as a court

of first instance. The bishop in person or the official-principal presides. The court cites a delinquent either *proprio motu* or at the instance of a complainant known as the *promotor*, and is competent to impose any ecclesiastical censure.

The spiritual courts were organised on their present basis in the course of the twelfth and thirteenth centuries; their procedure being borrowed for the most part from the system of the Roman Civil Law, the study of which had lately been revived. Long before this, however, the disciplinary procedure of the Church had been regulated by imperial laws, notably those of the Theodosian family and of Justinian. The spiritual and the temporal functions were then and for long after so ill-defined that it is hard to say whether this imperial interference was due to the temporal incidents already attaching to ecclesiastical censures, or to a general intention of controlling ecclesiastical procedure as such. The results were in any case accepted and incorporated into the ecclesiastical code, and the precedent cannot

be forgotten. From the thirteenth century onward the constitution and procedure of the spiritual courts were regulated exclusively by ecclesiastical authority, except to some extent in France and in the duchy of Venice. In England they were left unaffected, save in the matter of appeals, by the disturbances of the sixteenth century, but their practice became lax and even corrupt. In 1603 they were reformed in certain particulars by provincial constitutions, continuing to be governed in the main by traditionary customs. After this date the king's courts began a course of active interference by means of prohibition, against which there was much angry protesting. The spiritual courts had few friends; their penitential discipline was exercised harshly, vexatiously, and irrationally, and being supported by temporal penalties aroused the most vehement opposition, which played no small part in bringing about the catastrophe of the mid-century in Church and State. Like the rest of the ecclesiastical order the courts emerged from the time of

disorder intact in form but robbed of much power. In particular severe restraints were put upon procedure *ex officio* or without independent complaint. Throughout the eighteenth century and part of the nineteenth the spiritual courts continued to live on their traditions, maintained by the important corporation of advocates known as Doctors' Commons; but their proper work was restricted, and to a great extent rendered nugatory, by statutory legislation forbidding them to proceed against legally tolerated dissenters, a further consequence and a necessary consequence of the temporal penalties touching contumacy.

Since the middle of the nineteenth century these influences have reduced the courts of spiritual discipline to impotence. Their position has been worsened by statutory legislation intended for their reform, which has had some good effect in particular, notably in regard to the manner of taking evidence, but has been designed with so little regard to ecclesiastical principles that doubt has been thrown upon the spiritual competency of the

courts affected. History bars the contention sometimes put forward that a court reformed by Statute Law loses its spiritual character at once ; such legislation might be accepted now, as in the past, and even become an integral part of Church Law, but only if it conforms to true principles of church government. The greatest offence has been given by the Church Discipline Act of 1840 and the Public Worship Regulation Act of 1874 ; the latter has met with such determined resistance as to become a dead letter. A slight improvement is observable in the Clergy Discipline Act of 1892, which sets the bishop free in some cases to proceed summarily to the imposition of censures, and sets up in other cases a mode of inquisition which, though eminently unspiritual, is merely preliminary to a spiritual censure imposed, under perilous restrictions, by the bishop in person.

These statutes may be regarded as touching the mixed jurisdiction of the spiritual courts. They are more conclusively regarded as an external influence brought to bear upon the

Church, importing some good things which will certainly be incorporated into Church Law, but causing for the present a lack of confidence and a doubt of the competency of the tribunals which paralyse ecclesiastical discipline. We are concerned only with genuine Ecclesiastical Law, and it seems sufficient for the present time to say that the only essentials of a competent diocesan court of discipline are these: It must be presided over by the bishop or by an official freely commissioned by him, and must freely administer genuine Ecclesiastical Law. The appointment of a layman as official is a serious abuse, but it does not appear that he is incompetent to act as judge. The sacred canons only require that sentence of deprivation or deposition of a clergyman shall be given by the bishop himself.

*Conciliar Jurisdiction* is that which is exercised by several bishops in common. It is either *general* or *provincial*. The universal jurisdiction, independent of councils, claimed by the Roman pontiff is not now allowed by

the English Church, though it was once freely acknowledged, and many consequences of it survive in Ecclesiastical Law.

*General.*—A Council or Synod may assemble in various degrees of generality, from an Ecumenical Council of the whole Church to a National Council such as those held in England during the thirteenth century. The episcopal meetings occasionally gathered of late years from various parts of the world under the presidency of the Archbishop of Canterbury, if properly organised as synods, would come into the category of General Councils. A General Council has legislative power extending to all its constituent parts, and disciplinary jurisdiction to hear appeals, in cases of extreme need, from the provinces which it includes.

*Provincial* jurisdiction is partly retained by the provincial synod, partly deputed to the metropolitan.

*Legislative* jurisdiction is in the assembled bishops, who may not promulgate anything, where custom so rules, without the consent

of the clergy. By parity of reason it would seem that the Synod may bind itself to promulgate nothing without the consent of representative laymen, but this may be doubted.

*Dispensative* jurisdiction is vested in the metropolitan, whose dispensations run throughout the province. The special marriage licences of the Archbishop of Canterbury which run throughout England appear to be not provincial, but a relic of legatine jurisdiction granted by the Roman pontiff.

*Voluntary* jurisdiction is in the hands of the metropolitan. It is concerned chiefly with giving mission to the diocesan bishops by confirmation or consecration. The metropolitan can confirm alone; he is required to take at least two bishops with him for a consecration. The other bishops of the province are competent to confirm, and when the metropolitical see is vacant this function is usually committed to four of them. Less properly, but not irregularly, it is entrusted to a neighbouring metropolitan. In addition



to this the metropolitan takes over the voluntary jurisdiction of a diocese during the vacancy of the see. He has a vicar-general, with *ordinary* jurisdiction for these functions.

The *contentious* jurisdiction of a province is concerned at first instance with disciplinary process against a bishop, and with appeals from diocesan courts. It is held by good authorities that a charge of *heresy* must be investigated and judged, whether at first instance or on appeal, by the provincial synod, but in two or three cases during the last century this rule was not followed. For all other purposes there are provincial courts presided over by the metropolitan or his official, except that the king claims by Statute Law (1 Eliz. cap. 1) to have all causes in which he is concerned determined by the synod.

The *Audience* is a court of the province of Canterbury in which the metropolitan sits, with several bishops as assessors, to hear and determine complaints against a bishop.

The *Court of Arches* is the ordinary provincial

court of Canterbury, so called because in former days the official was invariably dean of the peculiar of St. Mary at Arches in the city of London, and for the convenience of suitors sat within its precincts. The corresponding court at York is known as the *Chancery*.

The provincial court can at first instance hear a *duplex querela* (p. 188) against a bishop, and also entertain any case sent from a diocesan court by *letters of request*. It can receive appeals from the diocesan courts in all causes, unless heresy, as above noted, be excluded.

Appeals to the Roman court being disallowed, Ecclesiastical Law knows nothing of any appeal in ordinary cases from the provincial jurisdiction, the English Church adhering in this respect to the ancient Canon Law. In the year 1164 Henry II. attempted by the Constitutions of Clarendon to restrain appeals to Rome, forbidding any appeal beyond the provincial court without the king's consent. At the same time he provided for recourse to the Crown in case of any failure of

justice in the archbishop's court. In that case the king would order a rehearing in the provincial court, apparently with a peremptory order to do justice in the matter alleged. This law remained practically inoperative until the passing of the Statutes of Appeals in 1533 and 1534 (24 H. viii. c. 12, and 25 H. viii. c. 19), which peremptorily forbade all recourse to the Roman court. At the same time the recourse to the king allowed by the older law was converted into a sort of appeal, the king being authorised, on complaint of lack of justice in the archbishop's court, to issue through his chancery a commission appointing certain delegates to hear and determine the cause and to give judgment and definitive sentence. Intended, no doubt, chiefly to supervise the mixed jurisdiction of the spiritual courts, and seldom called into action for any other purpose, this court of delegates continued in existence until the year 1832, when its powers were transferred to the King in Council, and were ordered by a statute of the following year (3 and 4 Will. iv. c. 41) to be

exercised by a judicial committee of the Privy Council. Great confusion has been caused by the action of this committee in regard to spiritual causes; but its jurisdiction, though exercised in control of the ecclesiastical courts, is purely temporal, and lies outside our limits.

## CHAPTER IX

### OF PASTORAL CARE

THE pastoral care of souls (*cura animarum*) is exercised in the ministry of the Word and of the Sacraments, by which the people of God are nourished and led on to perfection.

The *bishop* is the pastor of all the faithful in his diocese. His functions are to teach, to exhort, and to rule them by the ministry of the Word, and to bring them under the operation of grace by the ministry of the Sacraments. He does this either by himself, or by the aid of others. Some functions are reserved to him. He alone administers confirmation and ordination. He may reserve other things, as the power of absolution in certain cases. At one time he alone was the ordinary minister of public baptism, others administering it privately in case of necessity ; he must still be

consulted before any adult is baptized. His powers may be limited by the privileges of certain places, but to speak generally he can minister throughout his diocese, can preach anywhere, can receive the confessions of any of the faithful, and absolve them. In principle he is also bound to do all this according to his ability; but since the multiplicity of his cares prevents him from doing more than a very small part of the work himself, he appoints others to do it in partnership with him. The persons so appointed are either licentiates or curates.

*Licentiates* receive from the bishop a commission to preach or to administer the sacraments either generally throughout the diocese, or in some particular district. Priests residing in a diocese without being assigned any special functions usually receive a general licence. Deacons and readers may also receive such a licence; but in some cases the latter are restrained to a particular parish. Readers are usually restrained from preaching in consecrated buildings, but in some dioceses they are allowed to do this if the permission is

expressed in the licence. A special licence may be granted allowing a priest to preach and administer the sacraments in a private or proprietary chapel.

All such licences are granted at the discretion of the bishop, and may be withdrawn by him at his pleasure. Application for a licence must be addressed to the bishop himself or to his secretary.

There are also *privileged* licentiates who are held by presumption of law to be entitled to preach and to administer the sacraments without express permission from the bishop. These were at one time very numerous, including all members of the various orders of *friars*. At present they are found in the members of certain colleges, as at the universities, and by ancient custom (*Lyndwode*, p. 289) graduates in theology, admitted by a competent university, enjoy this privilege everywhere. A privilege doubtfully conceded to the private chaplains of noblemen was more closely restrained in consequence of the power claimed in the eighteenth century by Selina, Countess of Huntingdon, to

authorise her chaplains to conduct divine worship anywhere in the country. It is now permitted only in domestic chapels.

A limited authority is in practice extended to curates, enabling them to admit a priest to the occasional exercise of his office without episcopal licence. The bishop retains, and not unfrequently uses, the power to inhibit such exercise. The limits of the curate's discretion are fixed by the custom of each several diocese.

*Curates* are appointed in the manner above described (ch. vii.). We are not here concerned with the distinction between the several kinds of curates, except so far as to observe that where a curate having the status of incumbent (p. 81) is in charge of a parish, any other curates of the parish are required to minister under his direction. This is not indeed expressed in the instrument of their appointment, but it is established by custom. It is the general practice for the bishop to withdraw the licence of any such curate who refuses the common measure of subordination.



This measure, however, is not precisely fixed, and difficulties concerning it are not unfrequent. It is commonly understood that the conduct of divine worship, the order of preaching in church, and at least the public administration of the sacraments, are under the immediate control of the curate-incumbent, to whose directions, unless they be unlawful, other curates must conform. But it is not generally ascertained how far the incumbent may control his colleagues in respect of the frequency of their ministrations, or of the manner in which they are performed in private. In exceptional circumstances the bishop may direct or allow a subordinate curate to use great freedom in these matters, and to exercise his ministry in practical independence.

These things premised, the distinction need no longer be observed. Where a *curate* is spoken of in this chapter we are to understand a curate-incumbent, or one acting under his direction, commonly known as an assistant-curate.

*Teaching.*—It is the duty of the curate to

instruct the people of his parish in Christian doctrine; and first, the *unbaptized*. As we have seen (p. 50), there is now no organised catechumenate in the Church of England, our laws and customs being chiefly formed in times when the whole population was Christian. A rubric of the baptismal office directs that when adults are to be baptized, notice shall be given to the bishop, or some person appointed by him, in order that the candidates may be examined whether they be sufficiently instructed in the principles of the Christian religion. The decision whether a person shall be baptized or no seems therefore to be reserved to the bishop; but no provision is made for the instruction of the candidates. This duty therefore lies on the curate, as representing those to whom the Lord gave his commission to make disciples of all nations.

The *children* of the Church, being baptized in infancy, need instruction afterwards. The duty of providing this lies naturally on their parents, and by the rule of the Church on their god-parents also; but these are warned to

fulfil this duty by bringing their charges to the teaching of the curate. A rubric directs the curate to instruct the children sent to him after the second lesson at Evening Prayer on all Sundays and holidays. This rubric, however, seems to be merely directive, showing how this is to be done, if done during divine service. The express rule on the subject is contained in a canon (Code of 1603, No. 59), which requires the curate to give to this work half an hour or more, before Evening Prayer; and to this rule the common practice conforms. The obligation, as regards other holy-days than Sundays, may be considered obsolete, in consequence of accepted changes in the manner of observing those days; but though not obligatory, a catechism publicly held on such days may be of the greatest practical value, and is highly to be commended as in accordance with the mind of the Church.

*Catechism.*—The curate is bound to use the Catechism of the Church as, at least, the model and standard of his instruction.

*Schools.*—In the seventeenth century and later the law of the Church required all schoolmasters to be licensed by the bishop, and to use the Catechism in their teaching. This rule is not now observed. In some parishes there are schools where the power of giving religious instruction is expressly reserved to the curate by a trust-deed. The Education Act of 1902 has made this power very precarious, subjecting it in most cases to the control of a secular committee, and so destroying its ecclesiastical character. Where it survives it may still be exercised, but however great the moral obligation laid upon the curate to make the best possible use of opportunities thus afforded him, he does not seem to be canonically bound to teach in such schools. He is free to adopt in his discretion any methods of teaching whatever, apart from the obligatory instruction to be given in the church on Sundays.

*Confirmands.*—When the bishop announces a confirmation, the curate is required to send him a list of the persons in the parish whom

he thinks fit to be presented. As a certain measure of instruction is required in those to be confirmed, it follows that the curate must at least ascertain the degree in which these persons are instructed in Christian doctrine. He is further required by the sacred canons (Code of 1603, No. 61) to 'use his best endeavour to prepare and make able, and likewise to procure as many as he can' to be confirmed.

The law leaves the curate to act on his own discretion with regard to the further instruction of the faithful.

*Preaching*, as distinct from teaching, is the proclamation of the Gospel to unbelievers, or the exhortation of the faithful to live according to the rules of the Christian religion. Preaching is a function which the bishop may reserve to himself, or to persons specially licensed. At certain periods there has been such reservation.<sup>1</sup> At the present day all curates, except *deacons* in some dioceses, have an

<sup>1</sup> We are not concerned with the restraint of preaching by the civil authorities, which was common in the sixteenth and seventeenth centuries.

unrestrained right of preaching in their parishes.

The custom of the Church, attested by a rubric and enforced by various canons, requires the curate to preach during divine worship on Sundays. There appears to be no obligation as regards other holidays. This obligatory sermon is to be preached, according to the direction of the rubric, after the Nicene Creed. This rubric, being merely directive, does not call for a sermon to be preached on every occasion to which it may apply, but refers only to those times when the law of the Church requires it.

The curate may preach at other times, whether in the church or elsewhere in his parish, at his discretion. He may not preach beyond his own parish without the consent, at least tacit, of the bishop and curate of the place. A preacher, if not vested for officiating in divine worship, should wear his full canonical habit (p. 65, Const. *Concionatores* of 1571).

It is customary to preach a sermon after

evensong on Sundays, the practice having begun in the seventeenth century with the establishment of special lectureships for this purpose, and gradually become general.

Statute Law (*Pluralities Act*, 1 and 2 Vict. c. 106, § 80), following on this custom, empowers the bishop to order, at his discretion, *two* sermons in the parish church, and in some cases also in chapels of ease, on all or any Sundays. It is doubtful whether this practice has been so far adopted by the bishops as to become an established ecclesiastical custom.

*Strange Preachers.*—By Arundel's constitution, *Reverendissimae*, A.D. 1408, no person other than the curate of a place may preach without showing his authority for doing so. The canons of 1603 further require churchwardens to demand the exhibition of this authority by all strange preachers, and to enter their names and qualification in a book to be reserved for the inspection of the bishop. These provisions of law are very seldom recalled, but they are probably not abrogated by desuetude. It is understood that all curates

and other beneficed priests are allowed to preach, unless inhibited by the bishop, wherever they may be invited by the curate of the place.

*Orthodoxy.*—A preacher, since he is acting ministerially, is bound to deliver the doctrine of the Church and not his own opinions. This means, in practice, that when he goes beyond the formulated teaching of the Church he ought to guard his words by intimating that he is uttering only matter of opinion. Preachers are forbidden by the sacred canons (Code of 1603, No. 53) to contradict one another, in regard to open questions or lawful opinions, in the same church or neighbourhood, unless by direction of the bishop such controversy be allowed; the reason being that the faithful are not to be disturbed by such public oppositions.

*Visitation* is a regular exercise of ecclesiastical authority over communities or individuals (p. 151). The curate is required to visit the several members of his flock at his discretion. According to his promise made at ordination, he must 'use both public and private monitions



and exhortations, as well to the sick as to the whole.' The purpose of such visitation is private teaching and preaching, and in the case of the sick, the ministration of the Sacraments.

*Visitation of the Sick* is a duty more especially imposed by law upon the curate. The constitution of Stephen Langton, *Presbyterorum*, A.D. 1222, expressly required him to go only when summoned, but, as Lyndwode comments, the general law of the Church extends the obligation. So the 67th canon of 1603 requires the curate to resort to any whom he knows to be dangerously sick, to instruct and comfort them. An exception was then made in the case of a disease known or probably suspected to be infectious. This was perhaps intended to relieve the curate from any obligation to contravene a recent statute (1 Jas. I. c. 31), strictly enjoining the separation of the infected from all company. As a dispensation from the general duty of visiting the sick it is probably still valid, but to be used only in the interest of the public health, not for the

curate's own ease, and with due regard to the spiritual needs of the sufferer. The rubric for the Communion of the Sick clearly contemplates ministrations to the infected. A curate allowed to preach, as all are now except some deacons, is not bound to use the exhortation included in the Order for the Visitation of the Sick. He is bound to use the opening office of the order when required by notice to do so.

*Ministration of the Sacraments.*—The curate is bound to administer the sacraments to his people according to their needs. He has a certain discretion in this matter, being a steward of the mysteries of God, but his discretion is strictly limited. He may not arbitrarily withhold a sacrament from any one entitled to receive it. Sacraments are here spoken of in the wider sense of the word, including those seven commonly accepted in the Church.

*Fees.*—A curate is strictly forbidden to make any charge, directly or indirectly, for the administration of a sacrament. Fees may law-

fully be charged for other services rendered in connection with the administration, as for registration or certification; but the sacrament must not be withheld in default of payment, actual or promised. The breach of this rule is an act of simony, for which the offender is liable to the severest censures of the Church.

*Residence.*— Every curate, beneficed or licensed, is normally required to reside within the parish of which he has charge. The present custom of the Church of England allows a beneficed priest to absent himself for not more than three months in any one year, so only that he provides for the discharge of his office by a sufficient substitute. There appears to be no such exception of law in favour of an unbeneficed curate, who may not therefore be absent without the permission of his superiors, the incumbent or the bishop. The actual place of residence for an unbeneficed curate is defined in his licence to be within the parish, or within a certain distance from the church which he is to serve. A curate who holds cathedral pre-

ferment is further allowed to absent himself from his parish during such time as is required for the fulfilment of his duties *in matre*, provided that his total absence does not exceed five months in the year.

## CHAPTER X

### OF PUBLIC WORSHIP

ONE of the chief functions of the Church is the offering of public worship to Almighty God.

The normal *place* for this worship is in the mother-church of the diocese, or in parish churches duly appointed. The ancient observance of devotions at the tombs of martyrs led to the development of a system of more private chapels, which in the East are usually separate from the public church, but in the West are commonly contained within its walls. Other chapels are subsidiary to parish churches, being founded when the parishioners are numerous or remote; and others, again, are licensed for religious houses, colleges, or other institutions, to some of which the faithful in general are admitted. In some cases a chapel is allowed within a private house.

The faithful are required by law to worship ordinarily in their respective parish churches or chapels of ease. The cathedral or mother-church of the diocese is, however, open to all. Churchwardens are directed by the sacred canons to present those who are absent on Sundays and holidays (Code of 1603, can. 90), and especially such as resort to other churches ; and any curate receiving to the sacraments persons from another parish than his own is liable to suspension (*ibid.* can. 57).

The *ministry* of public worship is committed to the bishop with the priests and other clerks *in matre* at the cathedral church, to curates and other clerks in parish churches, and to clerks licensed for the service of particular chapels. It is understood that these may invite any qualified clerk to help or replace them on occasion, if he be not inhibited by the bishop, but this occasional help is not to be extended into habitual service without the bishop's licence. Turns of service in a cathedral are regulated by the local statutes, or by decree of the chapter;

in a parish church and its chapels by the incumbent.

The *time* of public worship is ordered to be on all days appointed to be kept holy and their eves, 'at convenient and usual times of those days' (Code of 1603, can. 14). The curate is understood to have a limited discretion in appointing the hour of worship in a parish church, so that he does not transgress this rule. The recitation of the Litany is also expressly ordered on all Wednesdays and Fridays 'at the accustomed hours of service' (*ibid.* can. 15). In addition, the clergy are bound to recite the divine service daily, and a rubric in the ritual states that curates are required to do this, unless reasonably hindered, publicly in church. Additional devotions may be held in parish churches at times appointed by the curate.

*Orderliness* in public worship is secured by the churchwardens and sidemen, who have power to place the parishioners in church, subject to the directions of the Ordinary. They do not appear to have any authority by

Church Law to appropriate seats or places permanently to favoured persons, though power is given them by Statute Law to do this\* in some new parishes, and to enact payment for the favour. For further security of order the Common Law of England is said to allow sidemen and beadles some of the legal powers of a constable within the church. Brawlers or disturbers of divine worship, once restrained by ecclesiastical censures, are now more summarily dealt with by the police and the civil magistrate.

The *ritual* of public worship for the English Church is contained in the *Book of Common Prayer, etc.* All ministers in parish churches are required by the sacred canons to observe this ritual 'without either diminishing in regard of preaching, or in any other respect, or adding anything in the matter or form thereof'; and it is to be used also in all chapels 'without any omission or alteration' (Code of 1603, can. 14 and 16). A necessary limit to this obligation is implied in the declaration of assent imposed on all candidates



for holy orders and all newly admitted curates by a canon of the year 1865, in which they promise, 'In all public prayer and administration of the sacraments I will use the form in the said book prescribed, and none other, *except so far as shall be ordered by lawful authority.*'

This limitation points both to future provincial or diocesan legislation and to the dispensing power of metropolitan or bishop. The effect of the latter is seen in the permission generally accorded to omit certain exhortations which are rather attached to the ritual than integrally incorporated. Legislative changes have been effected only by the growth of custom, which requires, it must be remembered, the entire, even if only tacit, consent of the episcopate. They are seen in the adoption of a new lectionary, and in the introduction of popular hymns to be sung during the pauses of the ritual. Apart from changes in the established ritual the bishop's *ius liturgicum* has been actively exercised in the authorisation of additional devotions. Until recently it seemed that growing custom

might sanction the use of such devotions in a parish church on the sole authority of the curate; but vigorous action by the bishops in the year 1898 arrested this development. The power of the bishop in this regard is strictly legislative: if it be exercised for the whole diocese the act should be promulgated in synod; if for a particular parish, it should be promulgated as publicly as possible in the parish church. It is doubtful (p. 153) whether any such act done otherwise than in synod retains effect after the death or cession of the bishop.

By *ritual* we are to understand what the Church expressly commands to be said or done. What is to be *said* is contained exclusively in the Book of Common Prayer and in the additional rites authorised by the episcopate. What is to be *done* is not exclusively there set out, but has sometimes to be ascertained by reference to other sources. The *manner* of performing the ritual, which may be conveniently described as *ceremonial*, is in part prescribed, in part left to the discretion of the responsible minister, as the chapter

in a cathedral, the curate in a parish church, subject always to legislative action in diocese or province.

The use of *music*, vocal or instrumental, is in the discretion of the responsible minister, the curate in a parish church, the proper officer in a cathedral.

*Rubrics* are marginal notes in ritual books intended to help the memory of the minister in regard to the conduct of public worship. They do not make up a complete directory, which indeed, if interpolated in the text of the rite, would be most cumbersome and distracting. The value of rubrics in law is disputed. There are some who treat them as positive law. This extreme opinion seems to be refuted by the history of rubric, both name and thing. The name was first applied to the abstracts of chapters and marginal references in books of the Civil Law, which were written in red ink expressly that they might be distinguished from the authentic text; it was afterwards applied to similar notes in ritual books. The earlier books of the kind were

scantly or not at all supplied with such notes. The directions for the ministers, so far as they were reduced to writing at all, were contained in other books, and these were usually nothing else but descriptive records of what was customarily done. When some degree of ritual uniformity was attained by the general use throughout the West of the Roman ritual, descriptive records of the traditional ceremonies used in the Roman Church were much in demand, any such record being known as *Ordo Romanus*. Fragmentary notes from the *Ordines* gradually found their way into the ritual books as rubrics, and to this day the rubrics of the Roman missal are in language descriptive, and not imperative. It is obvious that these rubrics had no value in law, except as evidence of what was customary. Certain churches, however, had elaborate directories of worship definitely imposed by authority. Conspicuous among these in England was the cathedral church of Salisbury, the *Consuetudinary* and *Custumary* of which were noted for their completeness, and

acknowledged as a standard of excellence. Considerable extracts from them, always imperative in form, were incorporated as rubrics in missals of the fourteenth and fifteenth centuries, and still more in the fifty editions of printed missals published for use in England before 1540. It is obvious that such rubrics, elsewhere than at Salisbury, were nothing more than suggestions, to be followed as convenience and local usage dictated. The common use of missals in this form would, no doubt, tend to produce greater uniformity, but they imposed no obligation.

The first English Prayer Book, brought into use in 1549, adhered to the national type in regard to the imperative form of rubrics, but reverted to an earlier type in having few, and those not very precise. It cannot be doubted that this paucity of rubric was meant to prepare the way for changes in the customary ceremonial. This was scrupulously adapted to the new ritual by those who cared for it, but others were allowed to vary it freely. As soon as the book was established in use

both royal and episcopal injunctions began to encourage and even to command innovation. Subsequent revisions added little to the rubrics, which remain essentially what they were, either references to positive law or evidence of customary usage. The Ornaments rubric, for example, about which so much has been said, is merely a quotation from a statute, the Elizabethan Act of Uniformity, and as positive law it is worth exactly what it is worth in the statute, acquiring no further value by being printed in the margin of the ritual; as a rubric it is evidence, to be taken with other evidence for what it is worth, of the intention of the Church to retain certain usages that prevailed in a given year. What those usages were must be ascertained from learned ritualists and antiquarians; the rubric is not in itself a ceremonial law.

The conception of rubric as law is probably derived from the great ritualists who in the seventeenth and eighteenth centuries studied the Roman Missal and Breviary. Though not entirely at one on this subject they

generally maintain the affirmative. But they proceed exclusively on the ground that the bulls of Pius v., *Quo tempore* and *Quod a nobis*, impose the obligation of observing the rubrics in detail; and even the strictest of them still distinguish between rubrics which are *prescriptive* and those which are merely *directive*. The English canons do not go so far: they merely order the exclusive use of a prescribed ritual, without descending to minute details. In the middle of the nineteenth century a wholesome reaction from prevailing laxity brought with it an almost superstitious regard for rubrics, which was disavowed by the bishops of the time. Quite another matter, and outside our scope, is the contention of lawyers that the Prayer Book, with all its minutest rubrics, by being annexed to the Act of Uniformity acquired the force of Statute Law. But even on that ground it may be urged that the book was annexed as a whole, and must be interpreted simply as a ritual book with its usual limitations.

In sum, the rubrics are first-rate evidence

of what is obligatory, though some are inconsistent with positive law, as that about catechising during Evensong (p. 175), some refer to an ideal that was never attained, and some to a state of things that is obsolete. They must be read with caution and with reference to other evidence, by means of which ministers of public worship should inform themselves of their duties.

The *form* of public worship is twofold. There is in the first place that which is used at the chief assembly of the faithful. It is known to the Greeks as the *Divine Liturgy*; to the Latin Church as *Missa*, a term of obscure origin which, starting from the sense of *dismissal*, took to itself the meaning of the assembly which is dismissed and the action which has been performed. The English derivative *Mass* fell into disfavour in the sixteenth century through association with mediæval abuses. Similar derivatives are used throughout Western Europe, both by Catholics and by heretics, except among Calvinists who have abandoned both name and thing, and in



certain parts of Germany where the native term *Hauptgottesdienst* is in use. In this book it is called the *Mass* for the simple reason that no convenient substitute exists in the English language.

The structure of the Mass, though varying in detail, is essentially the same throughout the Church. It consists of a collection of prayers, hymns, and lessons from Scripture, culminating in the consecration and consumption of the Sacrament of the Lord's Supper or Holy Eucharist. The form appointed for use in the English Church is the *Order of the Administration of the Lord's Supper or Holy Communion* appended to the Book of Common Prayer. No priest may vary this in the slightest degree, by addition or subtraction, without the permission of the Ordinary. The interpolation of popular hymns in the pauses of the rite, and the omission of certain exhortations, are commonly tolerated. The bishop may authorise new forms for the variable parts of the prescribed order, and it seems that he can upon

occasion allow the substitution of a totally different rite. Mass has thus been celebrated according to the Armenian rite in a parish church within recent years, and a bishop is said to have authorised the use of the former English rite of 1549 in a private chapel, and the use of the Latin rite after the Benedictine form in a religious house.

The omission of consecration and communion makes a *Dry Mass* (*Missa sicca*), a form now unknown to churches of the Roman rite, but commonly used in the middle ages, as now also throughout the Eastern Church when the priest is hindered from consecrating, and expressly provided for on occasion by a rubric in the English ritual. Another form without consecration, but with communion from the Eucharist previously consecrated, known as the *Mass of the Presanctified*, is used in Lent by the Easterns, on Good Friday only according to the Roman rite: there is no provision for it in the English ritual.

The *Litany* is a form of prayer normally

said at the beginning of the Mass, but available for use at other times.

The second form of public worship is known as the *Divine Service*, or *Common Prayer*, also as the *Divine Office*. This consists essentially of the recitation of psalms and lessons drawn from holy scripture or the writings of the saints, with brief prayers annexed. Something of the kind probably existed from the first years of Christianity, and in the second century it seems to have taken the form of a *vigil* or night watch, followed by the Mass at dawn. In the fourth century it appears to have had in the main a private character, performed by the more devout laity who were approximating to the life of *regulars*, the clergy intervening only for the concluding prayers. These devotees were, however, allowed the hospitality of the churches, and a more public character was eventually given to the service. It was developed on slightly different lines by the later monks.

The Divine Service or Common Prayer of the English ritual consists of the two offices of

Mattins and Evensong. It retains a trace of its origin in the obligation to recite it privately, if not publicly, laid upon the clergy. It is to be publicly recited on all Sundays and holidays at least, and the curate of a parish church should read it publicly at accustomed hours on other days as well, unless he be reasonably hindered. It is doubtful, however, whether he is liable to censure for neglecting this.

The custom of the English Church, never varied until within recent years, and probably still binding, requires the recitation of Mattins at the accustomed hour, to be followed, with or without a brief interval, by the celebration of Mass. When for any good cause there is to be no communion, the Dry Mass is celebrated. On Sundays, Wednesdays, and Fridays, and other days appointed by the Ordinary, the Litany is to be said between Mattins and Mass. Presumably this is to be done only when the service is of those days; and the occurrence of a festival will therefore exclude the Litany, unless it be otherwise ordered.

There seems to be no excuse for any breach of this traditional order of service. The various offices may be used independently and additionally at other hours, but not to the neglect of their use at the normal hour of worship.

The parishioners are required to provide most things needed in the celebration of divine worship, but candles for burning at the Mass are to be supplied by the curate (Winchelsey, *Ut parochiani*, and Lyndwode's gloss). Bread and wine for the communion are to be furnished by the churchwardens, 'with the advice and direction of the Minister,' at the charge of the parish (Code of 1603, can. 20). A rubric says that 'it shall suffice that the bread be such as is usual to be eaten, but the best and purest wheat bread that conveniently may be gotten'; but in spite of this the use of wafer-bread was enforced both by royal and by episcopal injunctions, Parker also inquiring about it in his Visitation Articles of 1569. He explained that the rubric referred only to cases in which wafer-bread could not

be obtained, or was likely to provoke superstition, 'a toleration in these two necessities' (Strype, *Parker*, p. 310). Any of the bread or wine not used in the celebration of the Mass becomes the property of the curate.

The alms of the faithful contributed at the Offertory of the Mass are at the disposal of the curate and churchwardens for pious and charitable uses. In case they cannot agree, reference must be made to the Ordinary. Collections of alms at other times of public worship, now common, are not provided for by law; the alms then contributed appear to be at the disposal of the curate.

The full Mass, with communion, is the normal form of worship for all Sundays and other holidays at the least; the Dry Mass should never be substituted on these days, but from imperative necessity. A rubric points to the communion of all the higher clergy *in matre* every Sunday at least. This is a reference to the standing custom of the Church. The canons of the Code of 1603, however, required communion in cathedral and colle-

giate churches only 'upon principal feast-days,' in parish churches only 'so often and at such times as every parishioner may communicate at the least thrice in the year,' and in colleges on 'the first or second Sunday of every month' (can. 21, 23, 24). These constitutions must not be read to overthrow the ancient practice of the Church. They are related to a practical infrequency of communion induced at the time by a rubric saying that 'there shall be no celebration of the Lord's Supper, except there be a good [*afterwards altered to convenient*] number to communicate with the priest, at his discretion.' His discretion was limited by a further suggestion that 'if there be not above twenty persons in the parish of discretion to receive the communion; yet there shall be no communion, except four (or three at the least) communicate with the priest.' This implies that a convenient number means a certain proportion at least of all possible communicants, namely about one-sixth. In this sense two bishops of the sixteenth century, Parkhurst of Norwich and

Middleton of St. David's, endeavoured to enforce the observance of the rule by Injunctions and Visitation Articles (*Ritual Commission*, ii. pp. 402 and 426), and though not founded on positive law, it became a root of custom, prevailing until comparatively recent times. It was, however, inconsistent with the rule set out in a rubric requiring communion at marriage, the observance of which, on days when there was no general communion, was expressly enjoined by the bishop of Norwich in the year 1636. (*Ibid.* p. 565.)

*Uniformity* of public worship in the legal sense is a matter purely of Statute Law. The Acts of Uniformity from Edward VI. to Charles II. were attempts, never successful, to compel all residents in the kingdom, except some few favoured persons, to worship according to the forms of the Church and not otherwise, and also to tie the authorities of the Church to one unvarying order. The former principle was abandoned by the Toleration Act of 1690, the latter by the Act of Uniformity Amendment Act of 1871.



## CHAPTER XI

### ADMINISTRATION OF THE SACRAMENTS AND OTHER RITES OF THE CHURCH

*Baptism* was publicly and solemnly administered, according to the ancient rule of the Roman Church which spread throughout the West, by the bishop alone, on the eves of Easter and Pentecost and at no other time. In case of need it was administered privately at other times and by other persons. A dispute which agitated the Church in the third century, respecting persons capable of conferring baptism, was eventually settled by the general recognition of any baptism as valid if celebrated by any person whatever in the proper matter and form and with right intention.

The difficulty of bringing children long distances to be baptized by the bishop led to a

relaxation of the above rule, and the public administration of the sacrament devolved on curates. The possession of a baptismal font came to be regarded as the characteristic mark of a parish church. By a further relaxation the public baptism of infants was allowed, though with diminished solemnity, at all seasons. At the national councils held in England during the thirteenth century an attempt was made to revive the former discipline, but without success, and in 1281 Peckham, in provincial synod, prescribed a merely nominal observance of it by the reservation of children born within eight days of Easter and Pentecost for baptism at the solemn times, requiring all children born at other seasons to be baptized, according to custom, as soon after birth as the parents desired.

The rubric of the baptismal office in the Prayer Book of 1549, recalling the ancient rule and its long decay, strongly commended the celebration of baptism on Sundays and holidays in the presence of the people gathered together for divine service. The recommenda-

tion remains in the present Prayer Book, and the rubric further directs the celebration of Baptism immediately after the second lesson at Morning or Evening Prayer. Another rubric directs the curate to admonish the people not to defer the baptism of children longer than the first or second Sunday after birth. These rubrics seem to be merely directive, but they testify to the custom of the Church, which, though weakened by variety of practice in late years, is not destroyed.

The *time* for the public administration of baptism is therefore during divine service on a Sunday or holiday soon after the birth of the child. For a good reason it may be administered more privately at other times, and in case of extreme need in private houses, with the least possible ceremony. In the latter case the person baptized must afterwards be brought to the Church, if possible, as directed by the ritual, for the addition of the omitted ceremonies. The curate must at once baptize any infant in his parish credibly reported to be in danger of death. Except

in this case he is not bound to baptize any but those who are 'brought to the church to him upon Sundays or holidays to be christened' (Code of 1603, can. 68).

The *minister* of baptism is ordinarily the bishop or the curate. A deacon is expressly allowed to baptize in the absence of a priest (*Ordinal*). In strict privacy any man or woman may baptize, if the subject seem to be in immediate danger of death. The rubric for private baptism directs it to be done by the minister of the parish, or, in his absence, by any lawful minister that can be procured. There is no doubt that by a *lawful minister* is intended one in Holy Orders; the words were introduced in 1604 at the instance of those puritans who objected to baptism by a layman, or even questioned its validity. The rubric cannot, however, override the general law of the Church, which fully recognises lay baptism as lawful in case of necessity. Many canons and constitutions require the curate to instruct his people in the mode of baptizing, with a view to their acting in any emergency.

They may do this ; but the rubric emphasises the duty of procuring a 'lawful minister' if possible.

The *matter* and *form* of baptism, being prescribed by the Divine Law, must be strictly retained in all cases, and in public baptism the whole ritual must be observed.

*Conditional Baptism.*—Baptism impresses *character*, as theologians say, and may never be repeated. If there be a doubt whether a person has been baptized, or about the validity of his baptism, he should be conditionally baptized with the form prescribed in the ritual, '*If thou art not already baptized, I baptize thee,*' etc.

The *subject* of baptism is an infant not yet arrived at years of discretion, that is to say, incapable of discriminating sin, or an adult person who has received proper instruction. The curate must at once baptize any infant brought to him at the proper time with suitable sponsors. An adult should not be baptized without reference to the bishop (p. 174).

*Sponsors* are required at the baptism of an

infant to make in the child's name the promises and professions required of him. At the baptism of an adult they present the subject and act as witnesses of his baptism. According to ancient custom they receive him into their hands after baptism, and are held to acquire in this way a formal relation to him. Their duties are explained to them in the ritual. The number was formerly limited to two, one man and one woman, but in 1236 a provincial constitution of Edmund Rich allowed three as now indicated in the rubric. The rubric seems to require three of necessity, and the practice for many years conformed to this, but there is no law to that effect, and custom has of late years recognised the sufficiency of one sponsor. The sacred canons forbid any person to be admitted as sponsor who has not received the Holy Communion. (Const., *Quivis cancellarius* of 1571. Can. 29 of 1603.)

*Verification* of baptism is necessary when a person is brought to the Church after being privately baptized. The curate must

ask the questions prescribed by the ritual, and obtain full and satisfactory answers. No evidence but that of an eye-witness can be received. Any person reported to have been baptized by a heretic or schismatic should be received in the same way with careful examination to ascertain the validity of the baptism; but it may be allowable, and even desirable, to do all in private, the direction of the bishop being sought in case of doubt. If the evidence of baptism be defective the subject should be baptized conditionally.

*Registration* of baptism is required by the sacred canons. The particulars of registration prescribed by the seventieth constitution of 1603 are fallen into desuetude. A statute of the year 1812 (52 Geo. III. c. 146) required, for civil purposes, a certain mode of registration, which had the effect of throwing the older method out of use, and the statutory method has become the established ecclesiastical custom. A separate register-book for baptisms, of prescribed form, is kept in the

custody of the curate, who enters therein all baptisms, public or private, performed in the parish. He should do this with his own hand, no stranger occasionally administering baptism having any concern with the register. A person administering baptism in a place where there is no baptismal church is required to forward a memorandum of the act, within one month, to the curate of a neighbouring parish, who will enter it in the register of that parish. The constitution of 1603 and the statute of 1812 alike require a copy of all entries in the register to be sent annually, under the hand of the curate and at least one churchwarden, to the bishop's registrar; but this requirement seems to have passed completely into desuetude.

An error in registration may be corrected, within one month of its discovery, in the presence of the parent or parents of the child baptized; in the case of an adult his own presence may probably suffice. The correction should be dated and attested by at least the initials of the curate.



No *fee* may be charged for registration of baptism, even regarded as a civil function (6 and 7 Will. IV. c. 86). A certified copy of an entry in the register is evidence in a court of law, and a fee may be charged for it, but this is outside the scope of Church Law. On the general principle that no charge may be made for the administration of a sacrament, it would seem to be wrong to levy a fee when a baptism is attested only for the purpose of the confirmation of the subject, and in that case the attestation need not be made in legal form.

*Christian Name.*—A name is ordinarily given to the subject at his baptism, at the intimation of the sponsors, or, in private baptism, of any bystander. The sacred canons forbid the minister to accept and impose any wanton or unseemly name. (Peckham Const. *Circa Sacr.*) If the sponsors announce a name in a popular abbreviated form the minister should impose it in its proper recognised form, and so enter it in the register.

*Confirmation* is the ritual complement of baptism, reserved to the bishop himself, throughout the Western Church, when the public administration of baptism passed out of his hands. Persons baptized are therefore to be brought to the bishop to be confirmed by him, and the sponsors of children are charged with this duty. According to present custom the bishop announces beforehand his attendance at certain places for this purpose, but he can administer the rite at any time and in any place at his discretion. The sacred canons actually require him to do this only in every third year at the time of his ordinary visitation: a much more frequent administration is customary. The mode of administration is fully prescribed in the ritual. Confirmation, like baptism, impresses *character* and may not be repeated.

It was formerly the custom to confirm infants as soon as possible after baptism. Confirmation is now reserved for those who are come to years of discretion. This technical expression signifies such a power to distinguish

right and wrong as renders the subject capable of actual sin, which children are usually held to attain soon after completing their seventh year. A further requirement is that the subject shall be able to say the Creed, the Lord's Prayer, and the Ten Commandments, and shall be generally acquainted with the Catechism. This points, in ordinary cases, to a still later age, but there is nothing in the law of the Church to justify the appointment of a certain fixed age, below which children shall not be admitted to Confirmation. It is the duty of the curate to give the bishop a list of persons in his parish suitably prepared for Confirmation. The bishop reserves the right of approving those presented, and may examine them in person or by deputy. He does not appear to have any right to reject them, except upon examination.

*Penance* is the solemn reconciliation of sinners who have fallen away after baptism. Its essential elements are an act of humiliation on the part of the penitent, called *exomologesis* or *confession*, having some degree of publicity,

and the *absolution* pronounced by a minister of the Church. During the second Christian century penance was made very arduous. It was ordinarily permitted for each person only once. It involved an open humiliation, during which the penitent was either excluded altogether from the assemblies of the faithful or admitted gradually and with conspicuous marks of inferiority. This was continued for varying periods, to terminate sometimes only at the near approach of death. Such penance was naturally imposed only for the graver sins, and there followed the distinction of *venial* sins, which were supposed to be remitted without formal reconciliation.

This rigour was gradually broken down, and there supervened an administration of penance far less onerous and less public, confession being made in the presence of a single priest, as representing the Church, who could thereupon, with or without delay, give absolution. This kind of penance became general, and by the Lateran Council of 1215 (Const. *Omnis utriusque sexus*) was made

obligatory on all Christians, whether actually in deadly sin or not, once a year before Easter. This rule, enforced in the Church of England for some centuries, has never been formally abrogated, but is slenderly observed. The more public administration of penance for open and notorious sins has been treated under the head of Ecclesiastical Censures.

The details of the administration of penance by a priest belong to the domain of Pastoral and Moral Theology. The following points, however, concern us here:—

The *minister* of penance is any one to whom God 'hath given power and commandment . . . to declare and pronounce to his people, being penitent, the Absolution and Remission of their sins'; and this power is conferred, according to the terms of the ritual, on every priest at his ordination. The existing practice of the Church of England allows a penitent to resort to any qualified priest for this purpose; a freedom which is attested by the invitation in the ritual: 'Let

him come to me or to some other discreet and learned Minister of God's Word, and open his grief; that by the Ministry of God's Holy Word he may receive the benefit of absolution.' But this liberty is limited by the consideration that absolution is an act of spiritual jurisdiction, which is reserved to those who have Mission. Consequently it would seem that except in cases of urgent necessity no priest can rightly administer penance or give absolution, unless he be a curate or otherwise licensed thereto. The principle of delegation, however, allows any priest, not inhibited by the bishop or otherwise under censure, to exercise this ministry in any place, by permission of the curate of the place.

*Confidence.*—A priest is forbidden by the sacred canons (Code of 1603, can. 113), under the severe censure of *irregularity* (p. 23), to reveal and make known to any person whatsoever anything committed to his trust and secrecy by way of confession. An exception has been made of a crime such as high treason, for concealing which his own life might be

called in question; but as it is improbable that the *post factum* concealment of any crime would now be treated as a capital offence, this exception is no longer of any importance.

*The sick.*—In visiting the sick a curate must not merely be ready to hear confessions; he is required by the ritual to *move* the sick person to make a special confession; which done, he is directed to absolve him in the appointed form.

The *order* of penance is determined by custom to consist of a confession by the penitent of all deadly sins committed since baptism or since the last act of penance, the performance of other acts of humiliation enjoined by the minister, and the absolution, the proper form of which is contained in the ritual for the visitation of the sick. In enjoining acts of humiliation, commonly called *penances*, the minister must not require anything that will make the penitent conspicuous, or suggest the nature of the sins confessed. He may delay or withhold absolution, for just cause, if the penitent seem to lack true repent-

ance; but this power must be exercised cautiously. A penitent to whom absolution has been arbitrarily or unreasonably denied may seek it from another priest, revealing the fact in confession.

A curate has no right to impose any open penance even upon the most notorious sinners, his jurisdiction not extending so far (p. 148). He can only present them to the bishop for correction.

The sacrament of the *Lord's Supper* must be celebrated in exact accordance with the directions of the ritual. So far as this pertains to the solemnities of public worship, it is treated elsewhere. Here the following points are to be noted:—

The *minister* is any bishop or priest not being excommunicate or irregular.

The *place* of administration is a church or chapel duly consecrated or licensed by the bishop of the diocese. Regulations formerly in force regarding the specific consecration of the altar, its materials and construction, are now obsolete. General permission is given to



curates to celebrate the Lord's Supper in a private house for the benefit of the sick, but only if there be 'a convenient place in the sick man's house, with all things necessary so prepared, that the curate may reverently minister' (*rubr.*).

*Reservation* of the sacrament for the communion of the sick and dying is one of the most ancient practices of the Church, fortified by many canons and constitutions. It has been asserted on the high authority of the Archbishops of Canterbury and York (A.D. 1901) that the practice is now unlawful in England, on the ground that no provision is made for it in the existing ritual, and that a rubric, requiring the reverent consumption of what remains of the consecrated elements immediately after the conclusion of the public service in church, makes it impossible. It is urged, on the contrary, that the law of the Church cannot be altered by a mere rubric, that this rubric was manifestly designed to prevent only an irreverent misuse of the sacrament, and that the absence of any direc-

tions for reservation in the ritual of the Church only throws upon the Ordinary the responsibility for regulation. The Archbishops' opinion has been widely but not universally accepted, and some bishops have regulated the practice.

In England, down to the middle of the sixteenth century, the reserved sacrament was conspicuously hung over the high altar of parish churches in a vessel known as the pyx. This custom being obsolete, and no settled use having taken its place, the manner of reservation is subject to the direction of the bishop of the diocese, for this does not appear to be a matter which was ever within the discretion of the curate.

*Frequency.*—For some centuries the law of the Church required the faithful, unless there were good cause to the contrary, to receive the Lord's Supper every Sunday at the least; and neglect of this rule was visited by censures. At a later period the greatest laxity prevailed, and the Lateran Council of 1215 enjoined communion only once a year, at Easter. So

narrowly was this rule interpreted that communion was popularly supposed to be actually forbidden the laity except on this one occasion. A provincial constitution, however, of Simon Sudbury, Archbishop of Canterbury, in 1378, ordered curates to exhort the people to communicate thrice in the year, at Easter, Pentecost, and Christmas; and from this source comes the rubric in the present ritual, requiring every parishioner to communicate three times in the year at least, of which Easter is to be one.

*Communicants* are all persons confirmed or ready and desirous to be confirmed. This latter qualification must refer to such as are fully prepared but have not yet found opportunity to resort to the bishop for confirmation. As these are to be *admitted* to the Holy Communion (*rubr.*), it follows that some one must have authority to admit them; and this can hardly be any one else but the curate, whose duty it is to see that they are prepared.

All persons once admitted continue admissible until they be deprived of communion by

regular process of discipline. Such is the general law of the Church. But two canons in the Code of 1603 afford some difficulty. The twenty-sixth declares that 'no minister shall in anywise admit to the receiving of the Holy Communion' any open and notorious evil liver, or any churchwarden who neglects to present offenders. The *admission* here spoken of is not clearly defined, and the curate might discharge his duty by warning such persons not to approach the Lord's Table. The twenty-seventh is more precise: 'No minister, when he celebrateth the Communion, shall wittingly administer the same to any but to such as kneel, under pain of suspension.' Here is an express command to withhold the sacrament even from those presenting themselves, and the prohibition is extended to all notorious depravers of the Prayer Book, and so forth, who are not to be admitted until they have acknowledged repentance and promised amendment before the curate and the churchwardens. The minister so repelling any 'shall, upon complaint, or being required by the Ordinary,

signify the cause thereof unto him, and therein obey his order and direction.' This canon seems to confer on the curate, with churchwardens as assessors, a power *in foro externo* to impose the minor excommunication. This jurisdiction is, however, too doubtful, especially after this lapse of time, to be safely exercised unless perhaps in the first case alleged, where a person presents himself for communion with openly expressed contempt for the prescriptions of the ritual.

In the same sense must be understood a much older canon forbidding the minister to give the Eucharist to any one not fasting. The ancient rule requiring the recipient to be fasting, which St. Augustine found to be so universally observed, with certain peculiar and express exceptions, that he could only attribute it to apostolic institution, caused little trouble and called for no disciplinary notice so long as there was no general custom of taking food before the normal hour of divine worship. This state of things continued until the eighteenth century was well advanced. The prac-

tice of taking an early breakfast, which has since grown up, causes grave difficulties and complications ; but the observance of the rule is a matter for each man's conscience, and the minister may certainly not withhold communion from any one whom he supposes, with or without reason, to have broken his fast.

The sacrament of *Holy Order* is administered by bishops alone, though priests may be associated with them in the act. A bishop is consecrated by at least three bishops, of whom the chief is either the metropolitan or one commissioned by him. A metropolitan is consecrated either by another metropolitan with at least two bishops, or by three bishops of his own province. A consecration by a single bishop, though unlawful except in case of necessity, is not invalid. The consecration of a bishop takes place on a Sunday or other holiday. The rite of consecration consists essentially in prayers of blessing said by one or all of the officiating bishops, while all lay their hands on the head of the elect.

Priests and deacons are ordained by the

bishop of the diocese, or another commissioned by him, 'only upon the Sundays immediately following *ieiunia quattuor temporum*, commonly called Ember Weeks' (Code of 1603, can. 31), and, as required by the ritual, in the course of the celebration of Mass. The rite consists essentially in prayers of blessing with imposition of hands. The priests assisting join the bishop in laying their hands on the heads of those being ordained to the priesthood. Formerly the Saturday of the Ember Week was the appointed day, as still in churches of the Latin rite. The Eastern Church has no such limitation of the day, and in England this rule is dispensed with on occasion by the bishop.

An opinion has been maintained that every priest has inherent in his office the power of ordaining, so that one ordained by him with adequate form and matter would be validly, though unlawfully and irregularly, raised to the diaconate or the priesthood. The question is an academic one, since the law of the Church would not allow any one so ordained to execute his pretended office. The fact would have

practical importance only on the following consideration.

The sacrament of Holy Order impresses character, and may not be repeated in the same grade without sacrilege. If, therefore, there be a doubt on any grounds whether a subject has been validly ordained or no, he should be ordained *conditionally*. But since the condition cannot, as in the case of baptism, be verbally expressed in the *form*, it should be expressed in the *intention* both of subject and minister; and to avoid all danger of scandal it would be well to make this expression public. There is precedent for recording the fact also in letters of orders (pp. 62-64).

The *unction* of the sick has gone almost entirely out of use in the English Church, though, being established by the direct authority of Holy Scripture, it cannot pass away into desuetude. No provision being made for it in the public ritual, it is left to any curate, in default of episcopal legislation, to minister it according to what is necessary. The rule of the Western Church, formerly adhered to



by the English provinces, requires the oil for unction to be blessed by a bishop ; but this is not the case in the Eastern Church, and the benediction is therefore not essential.

*Marriage* consists essentially in the agreement of a man and a woman to live together in wedlock. Public policy and public morality require the careful safeguarding of this agreement by law, and the contract of marriage is therefore regulated both by the State and by the Church. Fundamentally, however, it is instituted by neither, but by the Divine Law or Law of Nature. It must be considered first in this regard.

*Jure divino*, marriage is a state of union, effected by a contract, into which one man may enter with one woman, provided they be not too near akin to each other. It is dissolved by the death of either party, when the survivor is free to marry again, but is indissoluble while both the parties live.

The degree of kinship within which marriage is forbidden by the Divine Law is subject of debate. Some hold that it is forbidden only

to those related directly in the ascending and descending line. Others hold that the prohibition extends to collaterals in the first degree, barring the marriage of brother and sister, whether of full blood or of half blood. Others extend it to the brothers and sisters of any one in the ascending or descending line, as uncle and niece. Others, again, hold that it applies to those related by *affinity* in the same degree as to those related by consanguinity. The last two opinions are expressed in the table of consanguinity and affinity put out with authority, though it is doubtful with what legislative authority, in the Church of England.

For the validity of the marriage it is necessary that the contract be conceived in the terms of the Divine Law. It must be in full purpose a contract of *one* man with *one* woman. For this reason a marriage intended to be polygamous, as when a man takes a wife reserving to himself the right to take others also, is no marriage according to Divine Law, and the parties may separate. For the same reason a contract to live together *during*

*pleasure* would make no marriage. Such contracts may be enforceable by Human Law, and may suffice to legitimise the issue; but they are not to be regarded as making a marriage in the Christian sense.

*Human Law* may impose conditions, neglect of which will invalidate the contract and so nullify the marriage. This is technically known as the creation of an *impediment*, and impediments are of two kinds. *Impedimentum impediens* is a prohibition of marriage in certain circumstances, which renders the parties disregarding it liable to punishment or censure, but does not nullify the marriage. *Impedimentum dirimens* is a prohibition, disregard of which nullifies the pretended marriage.

Since marriage is primarily a state of the natural human order, it seems clear that the civil government can impose limitations of the above kind. But since marriage is also a state of the supernatural Christian order, it follows that the government of the Church also can impose limitations: these are impediments *iure ecclesiastico*. Until comparatively recent

times, all Christian commonwealths recognised the effect of these ecclesiastical impediments, and indeed left the regulation of marriage entirely to the Church. This is no longer the case. Most governments, including that of England, make their own regulations, and ignore, for legal purposes, ecclesiastical rules. They profess, also, as in England, to *dissolve* marriages for certain causes.

The *ecclesiastical* law of marriage, then, will recognise the effectiveness of impediments created by the civil government, and will also insist, for purely spiritual purposes, on those proper to Church Law, whether divine or human.

Every contract of marriage made in sufficient form by capable parties, free of impediment, in a sufficiently public manner, is recognised by the Church as a valid marriage. The *form* must be *per verba de praesenti*, by word of mouth or other equivalent sign, stating that the parties do *now* take each other to be man and wife. A contract of *future* intention does not suffice, though in some cases it sets

up an impediment to any other marriage. Publicity must be secured by the presence of at least two competent witnesses. The marriages contracted before a superintendent-registrar in England conform to those rules, if there be no impediment, and are therefore good in Ecclesiastical Law.

But the Ecclesiastical Law enjoins on Christians the duty of marrying *in facie ecclesiae*. This involves two requirements: (i) publication of banns, and (ii) solemnisation before a priest in the church. The object is to prevent *clandestinity*. The purpose of many excellent canons and customary laws in this regard was defeated during the eighteenth century by the growing contempt for ecclesiastical censures, by which alone they could be enforced; and a statute was enacted (26 Geo. II. c. 33) which codified the existing rules, gave them new legal force, and imposed severe penalties on persons infringing them. Other statutes have followed with increased strictness, which have not made any serious inroad on ecclesiastical rules, though in some

minor points the practice of the Church has been modified so as to conform to the Statute Law. The curate of a parish is mainly responsible for seeing that the requirements of the law, civil and ecclesiastical, are complied with; and if he fail, he is liable both to severe punishment and to ecclesiastical censure. He should therefore inform himself carefully in the matter. His duties may be summed up as follows.

He will receive a notice of banns. He may, and should, insist on this being in writing, showing the names and residences of the parties, and the time during which they have been resident. He may demand seven days' notice before the first publication, in order to make inquiries. The banns must be published in the church of the place where each party resides: if there be no church in use, then in the church of any adjoining parish. The residence must be real and not colourable; and the present law does not allow, as formerly, publication at the place where the parties' *parents* reside, a provision that some-

times bears hardly on domestic servants. Some chapels, not strictly parish churches, have by licence the right of marriage; and if a marriage is to be performed in one of these, the banns must be published in the same place. Publication must be in the appointed form on three several Sundays after the Nicene Creed, or if there be no service in the morning, then after the second lesson at Evensong. If the marriage does not take place within three months of the last publication, a new publication will be necessary.

A proper register-book of banns must be kept, from which the publication is to be read, and the entry afterwards signed by the officiant.

A curate who has published banns, if the marriage is to take place elsewhere, must on demand give a certificate of publication, signed and dated to the following effect: *I hereby certify that banns of marriage between N. of the parish of A. in the county of B. and N. of the parish of C. in the county of D. were duly published in the parish church of A. on three several*

*Sundays, viz. . . . and that no impediment was alleged.*

Banns may be dispensed with by a licence from the bishop of the diocese or the archbishop of Canterbury; and marriage *in facie ecclesiae* is permitted also to parties who produce a licence or certificate from the superintendent-registrar of the district, since this is regarded as an equivalent guarantee against clandestinity; but the curate is not bound to act in such cases.

A curate, receiving notice that parties intend to marry on a given day, may require reasonable warning, and may himself fix the hour, which must be between eight in the morning and three in the afternoon. The *solemnisation* of marriage, with the full ritual, is forbidden by Ecclesiastical Law between the first Sunday in Advent and the octave of the Epiphany, between Septuagesima and the octave of Easter, and between Rogation Sunday and Trinity Sunday, all inclusive; and since there is no form now in use for the contract apart from the solemn ritual, the *contract* also *in*



*facie ecclesiae* is barred during these seasons, unless by dispensation of the bishop.

The curate may not proceed with the marriage of parties between whom he *knows* an impediment to exist, unless he have this knowledge exclusively by private penitential confession; in which case he may not divulge the fact by refusing to officiate. He, further, should not allow any other priest to officiate in like case, though by Statute Law he may be forcibly compelled to allow this in the case of a party having a divorced consort still living.

The marriage must be solemnised according to the ritual. The minister, before proceeding, should demand the certificate of banns published in another church. At the appointed place he asks if any impediment be alleged, and if it be alleged with reasonable evidence of the fact, he should cease from officiating. The chief impediments to be borne in mind are (1) existing marriage of either party; (2) consanguinity or affinity; (3) incompetency through madness, idiocy, unconsciousness, or constraint of extreme fear, which

render a valid contract impossible; (4) inadequate age, where a boy is under fourteen, a girl under twelve; (5) minority, when the parents or guardians refuse consent; (6) disparity of religion, where one party is a Christian, *i.e.* baptized, and the other is not. The rubric bids the minister defer solemnisation only in case the objector will be bound by sureties to prove his allegation; but this is inoperative, since there is no provision of law for taking such surety. The minister is liable both to censures and to criminal penalties if he proceed in spite of an objection alleged by any apparently trustworthy person. There must be at least two witnesses of the espousals.

*Registration* of marriage, required for some centuries by Church Law, is now required under more stringent conditions by statute. The curate must keep a duplicate register, in which all particulars are to be entered according to directions given, and both he and the parties and two witnesses must sign the entry in each book.

*Fee.*—Custom sanctions the reception of a fee for solemnising marriage, but the curate may not exact this beforehand, or refuse to proceed if payment be withheld. For a copy of the register, which is a purely legal document, he may charge the appointed fee.

The provisions of law for declaring a pretended marriage *null and void*, and for discharging husband or wife from the obligation to cohabit (divorce *a mensa et toro*), being now made by statute and administered by the civil courts, are beyond our scope. This much ought to be said, that a marriage colourably good, even if a diriment impediment be privately known to have existed, ought to be treated in public as an effective marriage, until it has been annulled by decree of a competent court.

*Burial of the dead* is an ecclesiastical office to be performed with the appointed ritual in the case of all Christians or reputed Christians, with the exception of suicides and those who have died under the greater excommunication. By a reputed Christian is meant one who has

lived as such, however unworthily, even though actual evidence of his baptism be wanting. A person dying excommunicate should receive Christian burial if any one be 'able to testify of his repentance' (Code of 1603, can. 68). A *suicide* means not only one who is legally *felo de se*, but any one who has wilfully (*propria voluntate*) done himself to death (*voluntariae se morti tradiderit*). So the Council of Auxerre in 590, in its seventeenth canon, which passed, with a similar canon of the first Council of Bracara, into the earliest English penitential codes. The exclusion will therefore not apply to one who at the time of his deed was so far beside himself as to be incapable of *voluntary* action. The judgment of such a case is difficult, and is 'apparently left to the discretion of the curate, who should lean to the side of merciful interpretation, though not with the recklessness usually marking popular opinion.

Interment in a churchyard was formerly reserved for those buried with the rites of the Church; but all parishioners have acquired

a right, now confirmed by statute, of interment there with or without the ritual (p. 266). The church bell should be tolled when the rites of the Church are performed; not otherwise. The curate is bound without delay, that is after reasonable notice, to officiate at the burial of any parishioner brought to the churchyard or other burial-ground consecrated by the bishop for the use of the parish. His attendance at a burial elsewhere is voluntary. By Statute Law the officiant is required to see a certificate of registration of death, or a coroner's warrant, before proceeding to burial; or if this be wanting, then to report the burial within seven days to the registrar.

The Ordinary alone, by faculty, can reserve any part of a churchyard for the burial of particular persons. He alone, in like manner, can give permission for the erection of memorial stones, but this is customarily allowed by consent of the incumbent. No body laid in consecrated ground can lawfully be removed without a like faculty.

A fee is levied by the incumbent, the clerk

and the sexton, where local custom so orders, for burial in the churchyard ; but burial may not be refused if the payment of this be delayed or withheld. A clergyman officiating in a public cemetery may lawfully receive the fee provided in that case by statute.

## CHAPTER XII

### OF ECCLESIASTICAL PROPERTY

THE Church at large is not so organised as to be capable of holding property in any form. That which is called ecclesiastical property is held by various persons or corporations in trust, explicit or implied, for ecclesiastical uses.

Near akin to the tenure of property, though distinguishable from it, is the right of certain officers of the Church to receive offerings from the faithful for their own maintenance, or fees for services rendered. So long as these are paid only as a matter of conscience they may be regulated by pure Church Law. The ecclesiastical judge will decide, in case of dispute, who is entitled to receive the dues, and will require payment, if necessary, under pain of ecclesiastical censures. But if dues of this

kind become a legal charge, recoverable by civil process, there is an obvious complication. The English parochial clergy collected tithe from their people; when by evolution of law this became a legal charge on the land, the title to receive it became a legal hereditament, the ownership of which is naturally determinable by legal process. An ecclesiastical censure may deprive the tithe-owner of his office, but this ousts him from his title to the tithe only by virtue of that implied concordat on which now rests the mixed jurisdiction of the spiritual courts. In France a curate receives a fixed stipend from public funds; if the bishop remove him from his cure, he loses his title to the stipend by virtue of the express concordat there existing between Church and State.

More obvious is the position of funded property held by ecclesiastical persons *ex officio* or by trustees for their use. Pure Ecclesiastical Law may direct the holders how to use the property, and may determine what person ought to enjoy it; but the actual ownership



and the appointment of the profits will be determinable by legal process. Yet even here there is much confusion, due to the successful assertion by the Church in the middle ages of jurisdiction over all property held by ecclesiastics. The claim has disappeared, but the spiritual courts still retain a certain amount of the mixed jurisdiction to which it gave rise.

The same principle applies in a simpler form, because of the simpler tenure, to movable goods held for sacred uses.

We thus arrive at three modes of ecclesiastical property, which may be summarily designated (1) movables, (2) offerings, and (3) funded property.

In the first Christian ages, especially in the more thoroughly Romanised provinces of the Empire, Church property, both funded and movable, seems to have been generally held in common by *collegia tenuiorum*, voluntary associations which the law freely allowed to be formed for charitable purposes, and especially as burial societies. It was sometimes held and transmitted by individual persons under

a conscientious trust for sacred uses ; in which way several noble families at Rome held their ancestral houses precariously at the service of the Church. In all cases alike the ecclesiastical authority could only determine what use ought in conscience to be made of the property so held ; its ownership and actual possession was determined by the law of the empire. The crucial instance is that of Paul of Samosata, who was deposed from the bishopric of Antioch by a council of eastern bishops, but refused to surrender the buildings and other property of the Church until compelled to do so by a decree of the Emperor Aurelian.

The establishment of Christianity as a legal religion brought with it the possibility of other modes of holding property. From the fourth century we find the bishops holding *ex officio* considerable estates and transmitting them to their successors. When *parochi* were appointed they also held property in this way. Colleges also of clergy and monks held lands and goods in common. Out of these arrangements grew the system, which proved of incalculable

value in the face of feudalism, of vesting ecclesiastical property in *corporations*, sole or aggregate, with perpetual succession. A corporation is a legal personality; in modern England it is regarded in legal theory as an express creation of the law. As in other cases, bad history makes good legal theory. English law took over corporations already established by ecclesiastical custom, gave them legal status, and restrained any further creation of them except by grace of the Crown. At the present day a new corporation is expressly created by the civil government, and any corporation may be dissolved in proper form of law. The property of a dissolved corporation, for lack of heirs, falls as a matter of course to the Crown. In this way vast numbers of ecclesiastical corporations were dissolved in the sixteenth century and their property seized.

The solid principle to be disentangled out of historical complications is this: Church Law is concerned essentially with nothing else but the moral direction of persons holding ecclesiastical property in regard to its use, and the

enforcement of such direction by spiritual censures. The actual control of the property belongs essentially, and in a growing degree practically also, to the civil government; but vestiges of an older state of things leave much control to the ecclesiastical authorities. Our scope would require us to deal only with the ecclesiastical jurisdiction, pure or mixed; but it will be convenient to pay some regard also to purely secular legislation.

*Movables* are, in this connection, all things used directly or indirectly in connection with divine worship, technically called *ornaments*. Among these there was formerly a clear distinction between those reserved for more sacred uses, which were hallowed by the bishop and might not without grave formalities be turned to other uses or even be re-fashioned to a like use, and those intended for more ordinary uses, which were not so hallowed. This convenient distinction has disappeared, but the foundation of it is perfectly sound, and things are hallowed by use, if by no ritual benediction. Such are the font of Baptism

and the vessels, cloths, and vestments used in the celebration of the Lord's Supper. These are, with other ornaments, the legal property of some person or persons, but the care and the use of them is regulated by Church Law.

The ornaments of a cathedral, or other church or chapel which is not parochial, are usually the property of the persons, incorporate or not, to whom the use of the building belongs. The ornaments of parish churches and chapels are legally vested in the churchwardens, who have power jointly, but not severally, to assign them, to bring a suit for their recovery if lost, and to prosecute in case of theft. They may not, however, remove anything from the church, or alter it in any way, without the consent of the Ordinary first obtained by way of faculty. This rule applies in theory even to the most insignificant objects, but in practice the bestowal of minor objects, and especially of things that wear out with use, is left to the discretion of the churchwardens. The distinction of the more sacred ornaments should be borne in mind, and these,

when no longer fit for use, should be burnt and their ashes thrown on hallowed ground, or otherwise bestowed according to the direction of the Ordinary.

A faculty is also sought for the introduction of any ornament of notable importance into a parish church. If any one introduce such an ornament without a faculty, he may be required by the bishops' consistory to remove it, or a faculty for its removal may be obtained by any parishioner. A certain jealous guarding of their jurisdiction by the ecclesiastical courts has led in some cases to a severe application of this rule.

*Memorials* of the dead, placed in churches and churchyards, may suitably be mentioned here. They may not be erected without the permission of the Ordinary, which is given, as regards the interior of the church, by faculty; but as regards the churchyard, without formality by the mediation of the curate. The curate's discretion may be overruled by faculty. When placed they remain the property of the donor and his heirs, who may not, however,

remove them or alter them in any way, as by additional inscriptions, without the like consent as at the beginning.

The *faculty* here repeatedly mentioned must be sought by a petition addressed to the vicar-general through the diocesan registry. If there is likely to be no opposition, the registrar will usually advise the petitioner how to proceed ; but in case of opposition no step can safely be taken without the aid of a competent legal adviser. On receipt of the petition the vicar-general causes a citation to be published at the church door calling on opponents to appear at the registry within seven days, and intimating that if no opponent appears he will either grant the faculty summarily or consider it further. In the latter case, as also if there be opposition, there is usually a hearing in the Consistory Court. The costs of an unopposed faculty summarily granted are small ; they mount up rapidly with opposition or a hearing in court.

*Offerings* are normally at the free disposal of those to whom they are given, but some are

specially regulated by law. The alms and other offerings given at the offertory of the Mass in parish churches and chapels are at the disposal of the incumbent and churchwardens jointly. So a rubric, which appears to state accurately the custom of the Church. If they do not agree, the question in debate must not be determined by the majority of voices, but must be referred to the Ordinary for his decision. Offerings publicly made in the church at other times are generally held to be at the sole disposal of the incumbent. All offerings made in a cathedral church are at the disposal of the chapter, unless the church be also parochial.

The sacred canons require the provision in every parish church of an alms-box to receive offerings for the poor (Code of 1603, can. 84). This is to have three locks, one key being held by the incumbent and the others by churchwardens, and they are jointly to dispense the offerings. With regard to other alms-boxes, it seems clear that they may not be placed in the church except by faculty, or by permission of



the incumbent, and unless otherwise ordered the offerings appear to be at the disposal of the incumbent.

Considerable offerings were in former times made to curates for their own sustenance, and some were so determined by custom that a refusal to pay them was visited with ecclesiastical censure. Tithes were originally of this character, and the ecclesiastical duties payable at Easter, which are mentioned in a rubric of the ritual. Such customary offerings are now as a rule obsolete, and free-will offerings alone are received by the clergy, unless there be a local custom to the contrary.

Offerings of another class survive in a modified form, and constitute an important part of the revenues of the clergy in some parishes. These are payments made on account of special services rendered, usually known as surplice-fees. In some cases they are so firmly established by custom as to be recoverable at law. The curate and the clerk are entitled to fees for the publication of banns of marriage and for certifying the same, for the celebration of

marriage, for officiating at funerals, and at the churching of women after childbirth. In all cases but the last there is usually a customary fee fixed for each several parish, or a scale of fees may be appointed for any parish by the Ecclesiastical Commissioners, with the consent of the vestry and of the bishop. In new parishes, erected through the facilities afforded by the statute 6 and 7 Vict. cap. 37, the chancellor of the diocese has power to appoint a scale of fees.

No fee of any kind may be demanded for the celebration of baptism, nor may any other rite of the Church be withheld or delayed on the ground of non-payment. This was forbidden under pain of *anathema*, or the greater excommunication, by the constitution *Firmiter inhibemus* of Stephen Langton, where Lyndwode's gloss declares that any bargain on the subject would be simoniacal. The constitution, however, expressly provides that the Ordinary may require the payment of any offering customary on such occasions. The result is that a curate is bound to render his

services without any sort of stipulation for payment; but afterwards he may rightly demand the customary or appointed fee, and there seems to be no reason why he should not sue for it before the civil magistrate.

The burial authority responsible for a public cemetery is required by statute (Burials Act, 1900) to tender a fixed fee to every person ministering at a funeral; and this may be received without offence. By the same statute customary fees payable to incumbents on account of burials in such cemeteries, irrespective of services rendered, were reserved to the present holders during tenure of office, and to their successors for fifteen years from the date of the Act; afterwards they are to cease.

Incumbents are entitled to charge a fee, fixed in the same way as surplice fees, for the erection of any memorial to the dead in church or churchyard.

Stipends of assistant-curates, and of chaplains in religious houses or public institutions, are in the nature of offerings. For the stipend of a curate, however, the incumbent is made

responsible, and the appointed sum may be recovered by sequestration of his benefice. Other stipends are recoverable by ordinary legal process on the basis of contract. It may be doubted whether the holder of such an office, so long as he is licensed thereto by the bishop, may refuse to serve on the ground that his stipend is not paid. Such refusal would seem to have the taint of simony.

For certain incidents of registration, *statutory* fees are chargeable which do not come under the category of Church Law. As they are not concerned with the administration of the rites of the Church, the rendering of the service may be made conditional on payment received.

*Funded property* may be held either by trustees for ecclesiastical uses or by ecclesiastical corporations, whether in trust or for their own use.

*Trustees*, in all ordinary cases, hold property for uses determined by their trust-deed under the general control of the law, and are in no special way amenable to Church Law.

In some places Diocesan Trusts have been established to hold property for various ecclesiastical uses.

By the School Sites Act of 1841 the incumbent and churchwardens of a parish are expressly made a body corporate for the purpose of holding property to be used as a parish school. Schools so held are now, by the Education Act of 1902, almost entirely secularised, but are usually available for catechetical purposes at certain times.

*Church Trustees* are a body corporate created, under the powers given by the Compulsory Church Rate Abolition Act of 1868, for the purpose of holding any funds for ecclesiastical uses within the parish. They consist of the incumbent and two owners or occupiers of house or land within the parish, appointed, one by the bishop of the diocese, the other by the patron. These powers seem to have been exercised in very few instances.

The *Ecclesiastical Commissioners* and the *Governors of Queen Anne's Bounty* are corporations created by statute, which hold great

possessions of land and other funds for the benefit of the clergy, which are apportioned according to their own rules.

Congregations of *regulars* have no corporate existence in England, and their houses and other property must be held for their benefit by some person or persons, either absolutely or in trust.

All trustees are subject to the control of the High Court of Justice, and where they hold for charitable uses, they come under the jurisdiction of the Charity Commissioners or of the Board of Education. They are amenable to ecclesiastical jurisdiction only in their personal capacity as answerable in conscience for the due execution of their trust.

*Ecclesiastical Corporations* holding property for their own use are either aggregate or sole. Their property is held partly for sacred uses, partly for their personal enjoyment and sustenance.

*Corporations aggregate* are chapters and colleges. They hold in common their churches and the ornaments thereof for sacred uses, and

revenues which they employ, partly for the maintenance of the church and its service, partly for their own maintenance, either in common life or by distribution of dividends to individual members of the body. In their administration of the property they are bound by their own statutes and are subject to the control of the bishop or other visitor. Many of the English cathedral chapters have surrendered their estates to the Ecclesiastical Commissioners, receiving in exchange annual payments of money; but these monies should be regarded as funded property, being in the nature of a rent-charge on the surrendered estates.

*Corporations sole* are all holders of benefices. A *benefice* originally meant a grant of land or revenues to a certain person for life, usually made in consideration of services rendered. By a legal fiction, partly founded on historic fact, ecclesiastical possessions were supposed to have been granted in this way, but to a legally perpetual person, a bishop or a priest and his successors in office. This perpetual

personality, constituted by law, is a corporation sole.

A diocesan bishop holds by way of benefice property of various kinds, known as the *temporalities* of the see. The cathedral church is not, as in ancient times, vested in him, but in the chapter. The temporalities of a vacant see, according to English law, are in the custody of the Crown, and the king may enjoy the fruits. In past ages these were sometimes detained for long periods, but the general use is to grant the profits of the vacancy to the newly elected bishop, as a royal grace. When the new bishop has been confirmed he is entitled to sue for restitution of the temporalities from the Crown, and on receiving them he does homage. *Spiritualities* are those revenues of a bishop which arise from the exercise of his ecclesiastical jurisdiction, such as synodals and the like. Formerly extensive, these have now practically disappeared. On the ground that the co-active exercise of spiritual jurisdiction, by which alone such revenues can be secured, depends



on the support of the secular arm and is derived according to prerogative lawyers exclusively from the Crown, the bishop does homage for his spiritualities as well as for his temporalities, declaring that he holds them of the king. At the present day most of the English bishops, having resigned their estates to the Ecclesiastical Commissioners, receive a fixed money payment, representing their temporalities.

Below the rank of bishop benefices are distinguished as they are, or are not, attached to a cure of souls.

*Simple benefices* (*beneficia simplicia*), not having cure of souls, are most deaneries (some of them involving a cure), all archdeaconries, prebends, and sinecures. Deaneries and archdeaconries are variously endowed. *Prebends* are the several endowments of the clergy *in matre*, as distinct from what they hold in common, the holders being consequently known as prebendaries. By the legislation of the nineteenth century almost all prebendaries have been denuded of their estates, which

have been added to the common possessions of the Ecclesiastical Commissioners. *Sinecures* are parochial benefices, the holders of which, though regularly instituted and inducted, are discharged from all pastoral obligations.

*Curate benefices* (*beneficia curata*) are of three kinds—parsonages, vicarages, and perpetual curacies. They start from the parish church itself, which is regarded as legally the property of the *parochus*. There is usually provided also a house for his residence, with a small estate in land, called the glebe. The rector of the parish is the *persona* to whom belongs the estate consisting of the church and its appurtenances, which is therefore called his *parsonage*. In the rigour of speech this is the whole of the benefice, but so inseparable as to be practically indistinguishable is the right of the rector to receive tithes and other offerings from the parishioners. These are therefore usually considered to form part of the benefice, and the modern substitution of a rent-charge for the tithe has completed the amalgamation.

A *parsonage* now consists of (1) the church and churchyard, (2) the rectory-house and its curtilage, (3) glebe, (4) tithe-rent-charge, if it has not been compounded, (5) offerings and dues, (6) funded benefactions. The rector, having been instituted, is admitted to the 'real and corporal possession' of the benefice by *induction*. This is usually performed by the archdeacon, acting on a mandate from the bishop. The archdeacon issues a precept addressed to all clerks within his jurisdiction, one of whom attends at the parish church and reads the precept while the newly instituted rector, or his proctor, lays his hand upon the key of the door. The rector then enters the church alone, and tolls a bell for the public announcement of his induction. The precept is endorsed with a declaration of the completed act by the inductor and sundry witnesses, and is returned to the archdeacon for preservation in his registry.

The rector now has full possession of his parsonage, subject to certain conditions.

He must pay *first-fruits* and *tenths*. These

are charges, originally representing one year's profits and one-tenth of the annual profits, which the mediæval popes laid upon the English clergy. Henry VIII. seized for the Crown the revenue coming from this source ; and every benefice was taxed at a fixed value for the purpose. These values, entered in the *King's Books*, have remained unaltered, and are very small in comparison with the present values of the benefices. In the year 1704 this revenue was granted to the incorporated Governors of Queen Anne's Bounty, to be used for the augmentation of small benefices. Many benefices are discharged, by reason of their poverty or otherwise, from the payment of first-fruits and tenths, and newly founded benefices are not charged.

The rector holds the *church* for the use of the parishioners, and must allow them, and especially the churchwardens, access at all reasonable times. He is personally liable for the repairs of the *chancel*. This obligation, and others like it, will be treated more in detail under the head of *dilapidations*. The

rector is not liable for the repairs of the nave, which the parishioners are required to maintain. In the absence of a church rate it has been found impossible to fasten responsibility for these repairs on any one; local authorities requiring work of the kind to be done for the safety of the public, and doing it themselves in default of compliance, have been unable to recover the cost.

The rector holds the *churchyard* partly for public use for the burial of parishioners, but the herbage belongs entirely to him. He is not required to keep the fence in repair, that being among the duties of the parishioners. His consent is required, unless a faculty be obtained from the Ordinary, for the placing or alteration of any memorial to the dead; but he apparently has no right to remove a memorial placed without such consent, though he may proceed against those placing it for a trespass, or may obtain a faculty for its removal. He is required to allow the burial of all persons dying within the parish, or thrown up within its borders by the sea, even

though they were not members of the Church, and he must allow the performance of any rite or ceremony authorised by the Burials Act of 1880; that is to say, any funeral service of an orderly and Christian character, whether orthodox or heretical. He may require forty-eight hours' notice of such a burial, which he may forbid on Sunday, Christmas Day, and Good Friday. The notice must state the proposed day and hour of the funeral, and if the time so stated would be inconvenient on account of some other service already appointed to be held in the church or churchyard, the rector must within twenty-four hours either arrange with the notifying parties for another hour, or failing agreement, notify to them himself at what hour of the same day the burial is to take place. He may object to any burial between the hours of ten in the forenoon and six in the afternoon of any day from the first of April to the first of October, or between the hours of ten in the forenoon and three in the afternoon of any other day.

The church and churchyard are constituted

by the act of *consecration*, performed by the bishop, the legal effect of which is *ipso facto* to remove the freehold in the land from any person previously possessed of it, and to vest it potentially or actually in the parson. It is therefore obvious that no land may be consecrated without the consent of the previous owner, nor any to which there is not a clear title. Nor is this the only difficulty; for the jealousy with which the civil authority regards the transfer of land to be held by a corporation in *mortmain* has caused legislative obstacles to be raised. These can be overcome only by the aid of further legislation. The consecration of a church is therefore practically impossible without the aid of the legislature, which was formerly granted by special acts of parliament for several cases, but was given generally under stringent conditions by the Church Building Acts of the nineteenth century. In some rare cases consecrated churches are vested by statute in trustees. The usual course is to convey the site to the Ecclesiastical Commissioners; the

title being thus cleared, consecration follows, and the freehold passes to the incumbent.

The rector is required to keep the parsonage-house and all buildings and fences on the glebe in good repair. He may cultivate the glebe as he pleases, but he may not fell timber in glebe or churchyard except for express use in repairs for which he is liable, or for the repairs of the nave. The Court of Chancery has held, however, that he may cut and sell timber if he buys an equivalent amount of other timber for such repairs. With the consent of the bishop and patron he may fell timber for sale. He may not, without the like consent, open mines or gravel-pits, though he may work those already existing, nor may he quarry stone except for repairs. He has power, strictly limited by the provisions of the statute 5 and 6 Vict. cap. 27, to grant a farming lease for fourteen years, or with improving covenants for twenty years; but in this case ten acres at least must be retained in hand. Otherwise he can let the land from year to year in the ordinary way; but on his vacat-



ing the benefice, the tenancy will terminate without notice at the end of the current year. With the consent of the Ecclesiastical Commissioners he may grant a building lease for ninety-nine years. With the consent of the bishop and patron, and of the Ecclesiastical Commissioners, he can sell parts of the glebe, the purchase-money being invested by the Commissioners on account of the benefice.

*Tithe-rent-charge*, as now existing, was created by the Tithe Commutation Act of 1836. Tithe had legally become a tenth part of all produce of the ground, which the rector had to collect as best he could, the cultivator being required only to 'set it out' for his gathering. Tithes were distinguished as *praedial*, the immediate fruit of the ground in corn, hay, wood, fruits, and herbs, and *mixed*, arising from secondary produce, as cattle, milk, and eggs. These were not unfrequently compounded for by a money payment called a *modus decimandi*, which might acquire legal force; but new methods of cultivation brought with them serious disputes about extra-

ordinary tithes, as also in all places where the gathering in kind continued. For this reason the whole tithe of the country was in 1836 commuted for money payments, which were calculated on the amount actually received in each parish during the previous seven years. The amount to be raised in each parish and the apportionment of it to the lands of the parish, on which it was made a rent-charge, were determined by an award kept with the parish documents, a copy of which is in the custody of the Board of Agriculture. The sums actually payable vary from year to year, being determined by the average price of wheat, barley, and oats during the last seven years, the Board of Agriculture publishing in January a statement of the amount to be paid for each hundred pounds of the original award. By the Tithe Act of 1891 the rent-charge must be recovered, not as formerly from the occupier of land, but from the owner, and payment may be enforced when three months in arrears through the County Court; but if the amount exceed two-

thirds of the whole assessed value of the land, the excess is not recoverable.

Tithe-rent-charge is ordinarily payable in half-yearly instalments on April 1st and October 1st or on January 1st and July 1st, but in some parishes the amount for the whole year is customarily payable on October 1st.

Tithe-rent-charge may be redeemed by a grant of land, with the consent of the Board of Agriculture, or by a capital payment of money, which is invested on account of the benefice by the Ecclesiastical Commissioners. When the amount payable is under twenty shillings the tithe-owner may insist on redemption. Special provision was made by statute in 1886 for the redemption of extraordinary tithe.

*Funded benefactions* in augmentation of a benefice may be held by the parson himself, but are more usually held by the Ecclesiastical Commissioners or the Governors of Queen Anne's Bounty, both of which bodies will in suitable circumstances make grants from their common fund to increase benefactions privately given. The Ecclesiastical Commissioners also

create annuities chargeable to their common fund which they assign to certain benefices. Many new parishes are entirely endowed in this way.

*Vicarages* sprang from the appropriation of parsonages to religious houses or to prebends. Such appropriations were freely made at the instance of patrons in the twelfth and thirteenth centuries. The appropriators at first received the whole revenue and undertook all the liabilities of the rector, providing a stipendiary priest to serve the cure of souls. The neglect of parishes consequent on this arrangement led to conciliar legislation in the course of the thirteenth century, by which bishops acquired the power to insist on the appointment of a *perpetual vicar* where the parsonage was thus appropriated. Such a vicar was to receive a *congruous portion* of the revenues, settled in each several case by an ordinance of the bishop, usually consisting of the whole or part of the glebe, all offerings, and the *small tithes*, or those on other produce than corn, hay, and wood. A vicarage, thus con-

stituted, became a benefice, like a parsonage, and the freehold of church and glebe was transferred to the vicar, the appropriators being, however, still liable for the repair of the chancel. The bishop had power, in case of need, to increase the portion of the vicar by a sum of money to be paid by the appropriators out of the fruits of the parsonage, such increase being termed an *augmentation*.

The dissolution of the monasteries threw most appropriations into the hands of the king, who granted them to laymen, and in some cases gave them to bishops in exchange for lands. These last have for the most part passed with the episcopal estates into the hands of the Ecclesiastical Commissioners, as have all those formerly annexed to prebends. Parsonages so held are said to be *impropriate*. An impropiator retains the revenues of the parsonage, and is liable for the repairs of the chancel and for the payment of any established augmentation to the vicar. It is doubtful whether the bishop has power to enforce any further augmentation. The impropiator also

remains entitled to the chief seat in the chancel. Save as regards the above specific liabilities, the lands and tithe-rent-charge held by lay impropiators have passed entirely away from ecclesiastical uses.

An impropiator may surrender his holding to the vicar, in which case the vicarage is merged and the parsonage revives in its fulness.

A vicarage at the present day then consists of the appointed tithe-rent-charge and glebe, of augmentations, offerings, and funded benefactions. A vicar is liable for dilapidations in the same way and to the same extent as a rector, save in regard to the chancel, and has the same proprietary rights in all respects. He is also instituted and inducted in the same fashion.

In some parishes the rector, though instituted in the usual way, has no cure of souls, the parsonage then being a *sinecure*. A vicarage is usually instituted in such cases, and there is therefore a rector and a vicar in one church. Both benefices may be held by

the same person. There are also sinecure vicarages, in which case a perpetual curate is ordinarily appointed.

A *perpetual curacy* is a benefice created in a parish where there is neither rector nor vicar with cure of souls. A perpetual curate is nominated by the patron, and licensed by the bishop without institution or induction. It is doubtful whether the freehold of the church passes to him, but he has the same rights in regard to its use as a rector or vicar. He has the freehold of any glebe or house of residence assigned him, and all offerings other than tithe. He sometimes has a stipend payable out of the parsonage, an annuity from the common fund of the Ecclesiastical Commissioners, and various funded benefactions.

Until the end of the eighteenth century a new parish was created with parsonage complete, but under the Church Building Acts of the nineteenth century the incumbents of new parishes are styled perpetual curates, unless they are endowed, as in the ancient parish of Manchester, out of the funds of the original

parsonage. Such incumbents have the freehold of the church and are in all respects rectors, unless it be that they are not liable for the repairs of the chancel. By an unmeaning convention, supported by an Act of Parliament, they are usually styled *vicar*, though there is no appropriation.

*Residence.*—The tenure of a benefice binds a clerk to residence in addition to his obligation as curate. Thus he is obliged to reside actually in the glebe-house, unless he be dispensed therefrom by a bishop. The holder of a simple benefice is bound to residence just so far as the specific statutes of the foundation require. The holder of a benefice with cure of souls must reside for at least nine months in each year, unless he hold also a residentiary canonry in a cathedral or collegiate church. He must then reside for nine months on one or other of his benefices, but must not be absent for more than five months from his parochial cure.

The bishop may grant licence of non-residence to an incumbent (1) if there be no fit house of residence within the parish;



(2) if he be incapable, through infirmity, of fulfilling the duties of the cure; or (3) in case of the serious sickness of his wife or child. In the last case the licence is for six months only, renewable by permission of the metropolitan. With the approval of the metropolitan the bishop may grant a licence for any cause at his discretion.

*Mortgage.*—An incumbent has power, with the consent of the bishop and of the patron, to mortgage the fruits of his benefice as security for a loan to be expended on the building of a residence or on necessary repairs and sanitary improvements. The Governors of Queen Anne's Bounty are empowered to advance money for such purposes.

*Sequestration.*—On a signification from the Court of Bankruptcy the bishop may order the sequestration of a benefice. Certain persons are named to receive the fruits of the benefice. They must pay all legal outgoings, including the stipend of a priest appointed by the bishop to the charge of the parish, who may be the incumbent himself, and render an account of

the balance into the court for the benefit of the creditors. The incumbent retains the use of the glebe-house. A like method of sequestration is used if the incumbent fail to pay the appointed stipend of a curate, and generally for the recovery of payments ordered by ecclesiastical authority. A vacant benefice is placed by the bishop in the hands of sequestrators, who account to the new incumbent for the balance remaining after payment of all legal outgoings.

*Resignation.*—A benefice cannot be voluntarily resigned without permission of the Ordinary. This obtained, the resigning clerk executes a deed, usually before a notary public or the diocesan registrar, and presents it to the bishop, whose acceptance makes it effective. The Incumbents Resignation Act of 1871 allows a pension to be charged on a benefice resigned by a clergyman permanently incapacitated by sickness for the performance of pastoral duties, provided he has been for seven years continuously in the benefice. He must apply to the bishop, who appoints a

commission of inquiry. The commission reports on the expediency of the resignation, and the amount of the pension to be awarded. The patron may object, but his objection may be overruled by the archbishop of the province. A final order is made by the bishop, declaring the benefice void and chargeable with the appointed pension, which must not exceed one-third of the net annual value. The pension may cease or be altered if the holder undertake any fresh clerical duty, and it varies with the varying value of tithe-rent-charge, unless the profits be entirely drawn from other sources than tithe-rent-charge and glebe.

*Dilapidations.*—The holder of a benefice is required by Ecclesiastical Law to keep all the buildings and fences of the benefice in good condition for his successor. The bishop may inquire as to his care, and enforce by sequestration the carrying-out of necessary repairs. This general principle is all with which Church Law, narrowly understood, is concerned. By the Common Law of England the obligation was so far recognised that a newly appointed

incumbent could recover from his predecessor's estate the cost of repairs necessary on his entry. There was much uncertainty on this head, and in the year 1871 an elaborate statute, the Ecclesiastical Dilapidations Act, placed the whole matter on a new legal basis, and it is now regulated by Statute Law and not by Ecclesiastical Law.

The provisions are, in sum, as follows: At the request of the archdeacon, the rural dean, the patron, or the incumbent himself, the bishop may order inspection, which is made by the diocesan surveyor, an official appointed by the archdeacons and rural deans of the diocese. The surveyor reports on the repairs needed, their probable cost, and the time when they ought to be done. The incumbent or sequestrator may object, and the bishop may then order a fresh survey, and after full consideration will make his final order for the specified works to be executed. The incumbent must execute the work at his own cost, under pain of sequestration. Sequestrators pay the available profits of the benefice to the

Governors of Queen Anne's Bounty until the whole cost of the work is provided. The Governors have power to advance on loan, covered by mortgage of the benefice, the whole or any part of the cost.

The bishop, when requested to intervene, if the incumbent informs him within twenty-one days that he is about to put his buildings in proper repair, must allow him a reasonable time to do this, and if he is satisfied that the work has been well done he will take no further action; but he may at any time order inspection with its consequences.

When the work has been done, and the surveyor reports it satisfactory, a certificate is issued, which relieves the incumbent of all further responsibility, except for wilful waste, until five years have elapsed.

When a benefice falls vacant, unless there be an unexpired certificate of the kind just mentioned, the bishop directs inspection within three months. In this case both the new incumbent and the late incumbent or his representatives have the right to object. The

bishop makes his final order as usual, specifying the estimated cost of the work to be done. This amount becomes a debt, due from the late incumbent or his estate to the new incumbent, which he can recover at law. The new incumbent himself must pay the whole amount, whether he recovers it or no, to the Governors of Queen Anne's Bounty, who hold it until the work is complete.

## APPENDIX TO CHAPTERS XI—XII

THE following table has been issued by the Ecclesiastical Commissioners as a precedent, showing what fees they are disposed to authorise if called upon to act (p. 254).

Matter or thing in respect of which a fee is payable.	Fee payable to the Minister.	Fee payable to Clerk.	Fee payable to Sexton or Grave-digger.
	£ s. d.	£ s. d.	£ s. d.
<i>Baptism Fees</i> are forbidden by law.			
<i>Certificate of Banns</i> (no stamp required), . . . . .	0 1 0	.....	.....
<i>Marriage by Banns</i> (including publication of Banns), . . . . .	0 4 0	0 2 6	.....
<i>For Publication of Banns in a Church</i> other than that in which the Marriage is celebrated and for Certificate of such publication, . . . . .	0 2 0	0 0 6	.....
<i>Marriage by Licence</i> , . . . . .	0 10 0	0 5 0	.....
<i>Churching of Women</i> , a voluntary offering.			
<i>Tolling Bell</i> , at time of Death, . . . . .	.....	.....	0 1 0
<i>Burial of Stillborn Infant</i> , . . . . .	.....	.....	0 2 0
<i>Burial of Infant</i> under three years of age, . . . . .	0 1 0	0 1 0	0 2 6

Matter or thing in respect of which a fee is payable.	Fee payable to the Minister.	Fee payable to Clerk.	Fee payable to Sexton or Grave-digger.
<i>Burial of Parishioner</i> in ordinary grave five feet in depth, . . . . .	£ s. d. 0 1 0	£ s. d. 0 1 0	£ s. d. From 0 3 0 to 6 0
<i>Burial in New Brick Grave</i> , single width, six feet in depth, . . . . .	1 0 0	0 2 0	0 10 0
<i>Burial in New Brick Grave</i> , if more than six feet in depth, for every foot beyond six feet, . . . . .	.....	.....	0 2 6
<i>Burial in New Brick Grave</i> , double width, six feet in depth, . . . . .	2 0 0	0 2 0	1 0 0
<i>Burial in New Brick Grave</i> , double width, if more than six feet and for every foot beyond six feet, . . . . .	.....	.....	0 5 0
<i>For every Interment in a Brick Grave</i> , not new, whether of single or double width, . . . . .	1 0 0	0 2 0	0 10 0
<i>Vault in Churchyard</i> , not exceeding the length and breadth of a double brick grave and eight feet deep, and first interment therein, . . . . .	5 0 0	0 10 0	1 10 0
For every subsequent interment therein, . . . . .	1 0 0	0 5 0	0 2 6
<i>Headstone and Footstone</i> over single grave in churchyard, . . . . .	1 1 0	.....	.....
<i>Small Wooden or Iron Cross</i> , From, . . . . . To, . . . . .	0 10 0 0 1 0	..... .....	..... .....



Matter or thing in respect of which a fee is payable.	Fee payable to the Minister.	Fee payable to Clerk.	Fee payable to Sexton or Grave-digger.
	£ s. d.	£ s. d.	£ s. d.
<i>Iron or Stone or Brick Borders</i> , not exceeding one foot in height and enclosing space not exceeding twenty-six superficial feet, . . . . .	1 1 0	.....	.....
<i>Iron or Stone or Brick Borders</i> exceeding that height or enclosing larger space, . . . . .	5 5 0	.....	.....
<i>Horizontal Gravestone</i> not over eighteen inches high, . . . . .	5 5 0	.....	.....
<i>Horizontal Gravestone</i> , double width, not over eighteen inches high, . . . . .	10 10 0	.....	.....
<i>Tomb</i> of any kind other than as above, and of any material, in churchyard, not exceeding thirty-six inches high and five feet wide, . . . . .	10 10 0	.....	.....
<i>Chains or Railings</i> round single grave, . . . . .	2 2 0	.....	.....
<i>Chains or Railings</i> round double grave, . . . . .	3 3 0	.....	.....
<i>Monumental Brass or Tablet in Church</i> not exceeding ten superficial feet, . . . . .	5 5 0	.....	.....
For every additional superficial foot, . . . . .	1 1 0	.....	.....
<i>Brass Plate</i> attached to a Memorial Window, not exceeding one superficial foot, . . . . .	1 1 0	.....	.....
<i>Monument</i> , other than as above, in church, . . . . .	20 0 0	.....	.....

Matter or thing in respect of which a fee is payable.	Fee payable to the Minister.	Fee payable to Clerk.	Fee payable to Sexton or Grave-digger.
	£ s. d.	£ s. d.	£ s. d.
<i>Hatchment</i> , to be retained for limited period, . . . . .	1 1 0	.....	.....
<i>Additional Inscription</i> on head or foot stone in churchyard, . . . . .	0 2 6	.....	.....
<i>Additional Inscription</i> on tomb, other than a head-stone or foot stone in churchyard or on tablet or other monument in church, . . . . .	1 1 0	.....	.....
<i>N.B.</i> —Fees for non-parishioners, except for burial in private vaults or graves, are to be settled by special agreement.			
<i>Note.</i> —That in addition to the foregoing Table of Fees, which is fixed by the <i>Ecclesiastical Commissioners for England</i> , fees fixed by <i>Act of Parliament</i> are payable as under :—			
<i>Stamped Certificate of Baptism</i> , Marriage, or Burial, . . . . .	0 2 7	.....	.....
<i>Searching Register</i> (for the first year), . . . . .	0 1 0	.....	.....
<i>Searching Register</i> (for every year after the first), . . . . .	0 0 6	.....	.....
<i>Inspection of Tithe Map</i> and Instrument of Apportionment, . . . . .	0 2 6	.....	.....
<i>Extract from Tithe Apportionment</i> (for every seventy-two words), . . . . .	0 0 3	.....	.....

## INDEX

- ABSOLUTION, 216.  
 Admonition, 22.  
 Adults, baptism of, 50, 174.  
 Advowson, 112-114.  
 — sale of, 114, 115.  
 Affinity, 230.  
 Allegiance, oath of, 62, 122, 131.  
 Alms, disposal of, 96, 202, 252.  
*Apostles, Canons of the*, 29.  
 Apostles, powers of the, 5.  
*Apostolic Constitutions*, 29.  
 Appeals, 166-168.  
 Archdeacon, 78, 151.  
 Arches, Dean of, 151, 166.  
*Articulus cleri*, 70, 76.  
 Assent to the Book of Common Prayer, declaration of, 189.  
 — to XXXIX Articles, declaration of, 62, 120, 122.  
 — — form of, 131.  
 Assistant-Curate, 124.  
 — — jurisdiction of, 150.  
 Audience, Court of, 165.  
 Augmentation of Vicarage, 273.  
 Avoidance of Curacy, 126.  
  
 BANNs of marriage, 234.  
 Baptism, 205-213.  
 — conditional, 209.  
 — minister of, 169, 205, 208.  
 — no fee for, 254.  
 — registration of, 211.  
  
 Baptism, verification of, 210.  
 Beadle, 94.  
 Benefice, 259, 261, 262.  
 — to be held only by a priest, 118.  
 Benefices Act, 115, 121.  
 Bishop, election of, 97-104.  
 — homage of, 100, 260.  
 — legislative power of, 6, 10, 153.  
 — mission of, 105-111.  
 — origin of title of, 55, 66.  
 — temporalities and spiritualities of, 260.  
 Bread for the Holy Communion, 201.  
 Burial, 239-242.  
 Burials Act of 1880, 266.  
 — — of 1900, 255.  
  
 CANONICAL Obedience, oath of, 62, 122, 131.  
 Canons of Cathedrals, 73-75.  
 Canons, legislative value of, 7.  
*Canons of Hippolytus*, 29.  
 — of the *Apostles*, 29.  
 Capitular election, 100-104.  
 Catechism, 175.  
 Catechumens, 15, 50, 174.  
 Cathedral, 73.  
 Ceremonial, 190.  
 Chancel, repairs of, 264.

- Chancellor, 77, 152.  
 Chaplains, private, 171.  
 Chapters, 74, 100.  
 Character, indelible, 22, 52, 63, 214, 228.  
 Church Building Acts, 267, 275.  
   — consecration of, 267.  
   — Discipline Act, 161.  
   — rate, 86, 95.  
   — trustees, 257.  
 Churchwardens, duties of, 92, 187.  
   — election of, 89-91.  
 Churchyard, control of, 265.  
   — right of burial in, 241.  
 Clandestinity, 233.  
 Clergy, 15, 51, 55, 72.  
   — Discipline Act, 152.  
   — dress of the, 65.  
   — privilege of, 36.  
 Clerical Disabilities Relief Act, 64.  
 Clerk, ordination of a minor, 58.  
   — Parish, 81.  
*Codex Canonum*, 30, 31.  
 Coercion, 14.  
 Collation, 123.  
 Commissary, 144, 151.  
 Common Law, 7.  
   — Prayer, 199.  
   — — Book of, 188.  
 Communicants, 223.  
   — number of, 203.  
 Communion, fast before, 225.  
   — frequency of, 222.  
   — repelling from, 224.  
 Conciliar jurisdiction, 162.  
   — legislation, 10, 30.  
 Conditional baptism, 209.  
   — ordination, 64, 228.  
   — Conference, Diocesan, 77.  
   — Confession, 215.  
   — Confidence, 218.  
   — Confirmation, 52, 176, 214.  
   — — of a bishop, 106.  
   — *Congé d'élire*, 101, 104.  
   — Congruous portion, 272.  
   — Consanguinity, 229.  
   — Consecration of a bishop, 98, 105, 110.  
   — — church, etc., 267.  
   — Consistory, 77, 153, 155.  
   — Constitutions of Clarendon, 166.  
   — Contentious jurisdiction, 145.  
   — Contract of marriage, form of, 232.  
   — *Contumace capiendo*, writ *de*, 20, 141.  
   — Convocation, 70.  
   — Corporations, 258.  
   — — origin of Ecclesiastical, 247.  
   — *Corpus Canonum*, 31.  
   — *Corpus Juris Canonici*, 38.  
   — *Correptio*, 1.  
   — Council of Trent, 8, 109.  
   — Councils, 163.  
   — Courts, Ecclesiastical, 18, 39, 158.  
   — — — essentials of, 162.  
   — — — Crown control of, 143.  
   — Crown, derivation of jurisdiction from the, 140.  
   — Curacy, avoidance of, 126.  
   — Curate, appointment of, 112-125.  
   — — beneficed and unbeneficed, III.  
   — — meaning of the term, 80.  
 DEACON, 55.  
   — ordination of a, 59.

- Deacon to a benefice, presentation of a, 118.
- Dean, 74.  
— Rural, 78.
- Decretals, 30.  
— of Gregory IX., 38.  
— the False, 32, 105.
- Decretum* of Gratian, the, 34.
- Degradation, 22.
- Delegate jurisdiction, 144.
- Deposition, 22.
- Deprivation, 23, 126.
- Desuetude, 8-12.
- Dilapidations, 264, 279-282.  
— Act, the, 48, 280.
- Diocese, 67, 72.
- Disciplinary process, 157.
- Dispensation, 146, 150, 153, 164.
- Divine Law, the, 2-5, 28.  
— Service, 199.  
— — daily recitation of the, 187, 200.
- Divorce, 232, 237, 239.
- Doctors' Commons, 160.
- Donatives, 117.
- Dry Mass, 198.
- Duplex querela*, 118, 121, 166.
- ECCLESIASTICAL Commissioners, 257, 271.  
— Courts, 18, 39, 158.  
— Law, 4.  
— offences, 21.
- Education Act of 1902, 176.
- Election of bishop, 97-104.
- Ember-weeks, 227.
- Episcopate, the united, 67.
- Examination of ordinands, 60.
- Excommunication, 11, 16.  
— *ipso facto*, 27.
- Excommunication, major, 26.  
— minor, 25, 88, 225.
- Excommunicato capiendo*, writ *de*, 19.
- FABRICK, the, 92.
- Faculties, 251.
- Fast before communion, the, 225.
- Fee for certificate of baptism, 213.  
— — marriage, 239.
- Fees for services rendered, 182, 239, 241, 243, 253-255.  
— on appointments, 136.  
— scale of, 254, 283.
- Finance, parochial, 95.
- First-fruits, 263.
- Foro conscientiae*, jurisdiction *in*, 150, 154.
- Forum*, the ecclesiastical, 26, 148.
- GLEBE, 262, 268.
- Gratian, 33.
- Gravamen*, 70, 76.
- Haeretico comburendo*, writ *de*, 19.
- Heresy, judgment of, 165.
- Hippolytus*, *Canons of*, 29.
- Homage of bishops, 100, 260.
- Human Law, 3-5, 28.
- IDONEITY of presented clerk, 118-121.
- Impediments to marriage, 231, 237.
- Imperial legislation, 32, 45.
- Impropriations, 273.
- Incumbent, 81, 111.
- Incumbent, jurisdiction of the, 148.

- Incumbent, powers of the, 172.  
 Incumbents' Resignation Act, 278.  
 Induction, 123, 263.  
 Indulgences, 18.  
 Injunction, 143.  
 Institution, 117, 123.  
 Interdict, 25.  
 Intruded bishops, 108.  
 Investiture, 99, 105.  
 Irregularity, 23, 218.  
*Ius liturgicum*, 153, 189.
- JURISDICTION regarded as derived from the Crown, 140.
- KINGDOM of England, laws of the, 44.
- LAITY, the, 15, 51.  
 — bound by Canon Law, 52.  
 — in legislation, rights of the, 6.
- Lapse, 116.  
 Law, purpose of, 2.  
 Legislation, conciliar, 10, 30.  
 — diocesan, 153.  
 — imperial, 32.  
 — papal, 33.  
 — provincial, 43, 163.  
 Legislature, the Christian, 5, 10.  
 Letters, dimissory, 58.  
 — missive, 101.  
 — of business, 71.  
 — of orders, 62.  
 — patent for election of bishop, 103, 107.  
 — testimonial, 59, 119.  
 — — form of, 129.  
 Licence of assistant-curate, 125.  
 — — revocation of, 127.  
 — perpetual curate, 123.
- Licensed clergyman, 75, 170.  
 Litany, the, 198.  
 Lord's Supper, sacrament of the, 220-226.  
 Lyndwode, 42.
- Mandamus*, 143.  
 Marriage, ecclesiastical control of, 39, 142.  
 — licences, 147, 154, 164, 236.  
 — sacrament of, 229-238.  
 Mass, the, 196-198.  
 — frequency of, 202.  
 Memorials of the dead, 241, 250, 265.  
 Metropolitan, 67.  
 Mission, 105-107, 109, 116, 117, 125.  
 Mortgage on benefice, 277.  
 Mortmain, 267.  
 Movables, 248.  
 Music in worship, 191.
- NAME, the Christian, 213.  
 National synods, 43, 163.  
 Natural Law, 2.  
 Nomination to curacy, 124.  
 — — form of, 132.
- OATH of allegiance, 62, 122.  
 — canonical obedience, 62, 122.  
 — — forms of, 131.
- Offences, ecclesiastical, 21.  
 Offerings, 243, 251-256.  
 Offertory, alms given at the, 96, 202, 252.  
 Official, principal, 77, 144, 151, 152.  
 Ordain, whom a bishop may, 58.  
 Orders, administration of Holy, 226.

- Orders, major and minor, 56.  
 Ordinary, the, 145.  
 — jurisdiction, 144.  
 Organist, 94.  
 Ornaments, 248.  
 — rubric, 194.
- PAPACY, legislative power of  
 the, 11, 33-36, 41.  
 Parish clerk, 81.  
 — formation of a, 79.  
 — origin of the, 68.  
 Parishioners, 82.  
 Parliament, Acts of, and Church  
 Law, 46.  
 — clergy in, 69.  
 Parochus, 68, 79.  
 Parsonage, 262.  
 Patronage, origin of, 112.  
 — Crown rights of, 116.  
 Peculiars, 72.  
 Penance, 16, 24, 215-220.  
 — commutation of, 19.  
 — jurisdiction in, 149, 220.  
 — minister of, 217.  
 Pension to resigning incumbent,  
 278.  
 Perpetual curacies, 275.  
 Pewholders, 88, 188.  
 Pluralities, 125.  
 — Act, 154, 179.  
 Polygamy, 230.  
 Poores'-box, 252.  
 Positive Law, 2, 3.  
 Preacher, habit of, 178.  
 Preachers, strange, 179.  
 Preaching, 177.  
 Prebends, 261.  
 Presentation to a cure, 115.  
 — — form of, 131.  
 Priest, ordination of, 62, 226.  
 Privilege of clergy, 36.  
 Privy Council, judicial com-  
 mittee of the, 168.  
 Procedure, criminal, 19.  
 Prohibition, 142.  
 Promulgation, 8, 71.  
 Property in the primitive church,  
 tenure of, 245.  
 — present control of ecclesi-  
 astical, 248.  
*Pro salute animae*, process, 22,  
 27.  
 Province, 67-72.  
 Provisors, Statute of, 102.  
 Public Worship Regulation Act,  
 161.
- Quare impedit*, 115, 118, 121.  
 Queen Anne's Bounty, 257, 264,  
 271, 277.  
 Questmen, 89.
- READERS, 57, 170.  
 Reading in, 125, 131.  
 Reception, Gallican theory of, 40.  
 Rector, 80.  
*Reformatio Legum*, 43.  
 Registration fees, 256.  
 — of baptism, 211.  
 — of marriage, 238.  
 Regulars, 53, 258.  
 Reservation of the Sacrament,  
 221.  
 Residence, 183, 276.  
 Resignation of cure, 127, 278.  
 Revocation of licence, 127.  
 Ritual, 188-190.  
 Roman pontiff, jurisdiction of  
 the, 33-38.  
 — — title of the, 34.  
 Rubrics, 191-196.

- Rural-deans, 78.
- SCHISM, 17.
- Schools, 176, 257.
- Selectmen, 89.
- Sequestration, 277.
- Sexton, 94.
- Sick, communion of the, 182.  
— unction of the, 228.
- Sidemen, 89.
- Simony, 120, 183, 254, 256.  
— form of declaration regard-  
ing, 135.
- Sinecure, 262.
- Si quis*, 60, 63.  
— form of, 130.
- Spiritualities of bishops, 260.
- Sponsors, 209.
- State, antithesis of Church and,  
39, 45, 48.
- Statute Law, 7, 10, 41.  
— absorbed into Church Law,  
47.
- Statutory force of Canon Law,  
40, 46.
- Stipends of curates, 255.
- Submission of the Clergy, Act  
of, 40, 43, 46.
- Suffragans, 109.
- Suicide, 240.
- Sunday, obligatory worship on,  
186.  
— order of worship on, 200,  
202.
- Surplice fees, 253.
- Surrogates, 77, 144, 151, 156.
- Suspension, 23.
- Synods, diocesan, 76.  
— national, 43, 163.
- Synods, provincial, 68.
- TEACHING, 173-177.
- Temporalities of bishops, 260.
- Tenths, 263.
- Testaments, ecclesiastical con-  
trol of, 39.
- Timber on glebe, 268.
- Tithe, 82, 244, 269.  
— rent-charge, 269-271.
- Title for orders, 61.
- Titulus*, 68.
- Tonsure, 56.
- Tradition, the Christian, 4, 6.
- Trent, Council of, 8, 109.
- Trustees, 256-258.
- Unam sanctam*, the bull, 36.
- Uction, 228.
- Uniformity, Act of, 195, 204.
- Universities, privilege of, 171.
- Ut parochiani*, 92, 201.
- VACANCIES, 155.
- Vestry-meeting, 84-89.
- Vicar-general of diocese, 77, 144,  
151, 152.  
— of province, 72.  
— of parish, 80, 272.
- Vicarages, 272-275.  
— origin of, 113.
- Visitation, 151.  
— of the sick, 181, 219.
- Voluntary jurisdiction, 145, 154,  
164.
- Vows, religious, 54.
- WAFERS, 201.
- Worship, appointed place of, 186.  
— time of, 187, 200.



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